4672.

SUPREME COURT OF THE UNITED STATES.

No. 151.

MYRA CLARK GAINES, APPELLANT,

vs.

DUNCAN F. KENNER, JOHN S. MINOR, RELF, CHEW, AND AL.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

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SUPREME COURT OF THE UNITED STATES.

No. 181.

MYRA CLARK GAINES, APPELLANT,

vs.

DUNCAN F. KENNER, JOHN S. MINOR, REILY, CHEW, AND AL.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

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Citation, print.

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

MYRA CLARK GAINES
vs.
DUNCAN F. KENNER, John S. Minor, Relf, Chew, et als. } No. 1729.

Pleas and proceedings before the honorable the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, being the December term, A. D. 1849, of the said court, held at the city of New Orleans, in the district aforesaid, on the ninth day of February, A. D. 1850.

Be it remembered, that heretofore, to wit, on the twentieth day of July, A. D. 1848, came the complainant, by her solicitor, P. C. Wright, esq., and filed in the clerk's office of the said court an amended and supplement bill of complaint, in the words and figures following, to wit:

To the judges of the United States circuit court, for the fifth circuit, within and for the district of Louisiana.

Edmund P. Gaines and Myra Clark, his wife, who are citizens of the State of Tennessee, by leave of the court first had and obtained, bring this their amended bill of complaint against Richard Relf, Beverly Chew, Duncan F. Kenner, Minor Kenner, George Kenner, and Mrs. G. Currie Duncan, wife of George Currie Duncan, and her husband, heirs of William Kenner, deceased, John S. Minor, Phillip S. Minor, Harry Minor, William N. Minor, Francis E. Minor, and Laura P. Minor, heirs of Phillip Minor, deceased, and Mrs. Mina F. Minor, their mother, all of the State of Louisiana, and are citizens thereof.

And thereupon your orator and oratrix complain and say, that heretofore, to wit, on the 28th day of July, 1836, your oratrix, then the wife of William Wallace Whitney, now deceased, with her said husband, filed her bill of complaint in this honorable court, wherein your oratrix, with her then said husband, were complainants, and the above named Richard Relf, Beverly Chew, said Phillip Minor, since deceased, George Kenner, and Duncan F. Kenner, with others, were defendants.

That in said bill of complaint it was stated and set forth, amongst other matters, that Daniel Clark, late of the city of New Orleans, in the State of Louisiana, and the father of your oratrix, the said Myra, was at the time of making his last will hereinafter mentioned, and at the time of his death, seized in fee simple, or otherwise well entitled to, and lawfully possessed of, in the said eastern

district of Louisiana, divers freehold messuages, plantations, lands, tenements, hereditaments, and premises hereinafter enumerated, and situated, bounded, and described as follows, that is to say, a tract of land purchased by Daniel Clark of William Simpson, by act passed before Peter Pedesclaux, notary public of the city of New Orleans, on the 5th day of June, 1812, and which is situated in the parish of Ascension, and county of Acadia, on the left bank of the river Mississippi, measuring in front on said Mississippi river, 18 and ½ arpents, and extending back from said river Mississippi, in depth 40 arpents, and bounded on the lower side by land which was owned in 1816 by Beverly Chew and Richard Relf, and on the upper side by land which was sold and conveyed in said year, 1816, by Beverly Chew and Richard Relf, to Stephen Henderson and G. N. Destreham; and that said Phillip Minor, now deceased, George Kenner and Duncan F. Kenner, claimed to hold and to be entitled to, as joint or several owners, or otherwise, the said above described tract of land, and that said George Kenner and Dudcan F. Kenner occupied the same, and that the said Daniel Clark, at the time of making his last will hereinafter mentioned, and at his death, was entitled, (amongst other property,) to certain property, debts, and demands, which are enumerated in a schedule of debts and property made and filed by Richard Relf and Beverly Chew, in the probate court for the parish and city of New Orleans, on the 3d day of March, 1814; the whole amount of the said schedule of debts and property being, as nearly as your oratrix had been able to calculate the same, three hundred and twenty-three thousand one hundred and eighty-eight dollars and four cents, independently and exclusively of certain real estate belonging to the said Daniel Clark, specified and set down in said schedule at the value of three hundred and forty-four thousand dollars; and that it is expressly charged that all or nearly all of the said amount of three hundred and twenty-three thousand one hundred and twenty-eight dollars and four cents, was belonging to and the property of the said Daniel Clark at the time of his, the said Daniel Clark's, death.

And it is also expressly charged that previous to the death of the said Daniel Clark, it had long been the intention and earnest desire of the said Daniel Clark, the father of your oratrix, to leave at his decease all his property and estate, real and personal, to your oratrix, the said Myra Clark; that in order more effectually to secure the fulfilment of said intention and desire, the said Daniel Clark did, in or about the month of July, in the year 1813, duly make and execute his last will and testament, according to law, having wholly written and signed the same with his own hand, and did in and by the said will declare your oratrix, the said Myra, to be his legitimate child; and the said Daniel Clark did also, in and by his said last will, devise and bequeath to your oratrix, the said Myra Clark, all his, the said Daniel Clark's, property and estate, real and personal; and did name therein, as the executors of the said will, Colonel Joseph Deville Degoutin Bellechasse, James Pitot, and Chevalier Dusuau de la Croix, appointing the

said Chevalier de la Croix tutor also of your oratrix, the said Myra Clark, your oratrix being then an infant under the age of twenty-one years, to wit, of the age of seven years. And that the said will did also contain some bequests to friends, amongst which bequests were a legacy of two thousand dollars per annum, to be paid to Mary Clark, the mother of the said Daniel Clark, during the lifetime of the said Mary Clark; an annuity of five hundred dollars, to be paid yearly, to one Caroline De Grange, until the said Caroline should have attained her majority, when the annuity should cease, and the sum of five thousand dollars should be paid to her; and also a bequest of five thousand dollars to be paid to the son of the said Judge James Pitot; and the said will further contained specific and detailed instructions respecting the education of your oratrix, the said Myra, and the management of the estate and property of the said Daniel Clark during the infancy of your oratrix; and it is expressly charged that the said will was wholly written and signed with the proper hand of the said Daniel Clark; that the said will was shown by the said Daniel Clark to, and its contents read by, the said Judge James Pitot, the late John Lynd, notary public in and for the parish and city of New Orleans, Mrs. Harriet Smith, and others; and that the said will was also shown and its contents communicated by the said Daniel Clark to the said Colonel Bellechasse, Chevalier De la Criox, Mr. Pierre Barron Boisfontaine, and others; and that the said Daniel Clark departed this life on or about the 16th day of August, in the year 1813, without altering or revoking his said will, and leaving your oratrix, the said Myra Clark, his only child or descendant, and the forced or instituted heiress of all his property and estates, real and personal; and it is expressly charged that the said Daniel Clark left at his decease no child or descendant him surviving, except your oratrix, the said Myra Clark; and that your oratrix, the said Myra Clark, was the lawful and legitimate and only child or descendant of the said Daniel Clark, and entitled as such by the law of the land to the possession and inheritance of all the property and estate of the said Daniel Clark, and especially to the property and estate, real and personal, thereinbefore enumerated and described. And it is especially charged that your oratrix, the said Myra Clark, soon after her birth, which took place in the month of July, 1806, was placed by her father, the said Daniel Clark, in the family of Samuel B. Davis, with whom she continued to live in the city of New Orleans until the year 1812, when the said Samuel B. Davis removed to live to the city of Philadelphia, in the State of Pennsylvania; that your oratrix, the said Myra, accompanied the family of the said Samuel B. Davis to Philadelphia, and remained in his, the said Samuel B. Davis's, family, until the time of the death of the said Daniel Clark and afterwards; and that during the lifetime of the said Daniel Clark he, the said Daniel Clark, continued to exercise the authority, care, and protection of a parent in regard to your oratrix, the said Myra Clark.

And that in or about the month of May, in the year 1811, the said Daniel Clark was led to believe that one Daniel W. Coxe, of Philadel-

phia, with whom he had previously had some connexion in business, had by imprudence or misconduct involved him, the said Daniel Clark, in some serious pecuniary and commercial difficulties and embarrassments; that immediately thereupon the said Daniel Clark deemed it advisable to proceed to Philadelphia forthwith, in order to attend personally to the settlement of the difficulties which it was represented to him existed; that preparatory to his undertaking the voyage from New Orleans to Philadelphia for the aforesaid purposes, and in or about the month of May, 1811, he, the said Daniel Clark, conveyed property to Samuel B. Davis and others to the amount of several hundred thousand dollars, to be held in trust by them for your oratrix, and then at or about the said time there made a will devising, briefly and in general terms, his property to his mother, Mary Clark, then residing out of the State of Louisiana, and also appointing Richard Relf and Beverly Chew, two of the defendants herein, the executors thereof. And that the said Daniel Clark, in or about the said month of May, 1811, proceeded to Philadelphia and returned again in a few months thereafter, and in the same year to New Orleans; that the said Daniel Clark had ascertained at Philadelphia, upon his having proceeded thither as aforesaid, that his interests had not been so seriously jeopardized by the said Daniel W. Coxe as he had been led to believe as above stated, previous to his having gone there; and that he did, therefore, upon his said return to New Orleans, receive back some portions of the property which he had conveyed as aforesaid in trust for your oratrix, the said Myra, which under the above mentioned erroneous belief respecting the supposed difficulties in which the said Coxe was alleged to have involved him; and that upon his said return to New Orleans, and upon his having ascertained as aforesaid the groundlessness of the apprehension which had been excited in his mind relative to the consequences that might result to himself from the transactions of the said Daniel W. Coxe, he, the said Daniel Clark, did also declare that he no longer intended that the said will made in 1811 should be his last will; that he had made it while laboring under false impressions, and only provisionally; and that he should revoke the said will of 1811, and make and execute another will, devising and bequeathing all his estate, real and personal, to your oratrix, the said Myra Clark; and it is expressly charged that the said Daniel Clark did revoke the said will made in 1811, as aforesaid, and did, after the making and execution of said will [of] 1811, duly make and execute, in the year 1813, and but a short time before his death, his, the said Daniel Clark's, last will and testament, devising and bequeathing thereby to your oratrix, the said Myra Clark, all of the real and personal estate of him, the said Daniel Clark, and declaring your oratrix, the said Myra, to be the legitimate child of him, the said Daniel Clark; and that the said Daniel Clark did upon his death-bed, and unto the very moment of his decease, continue to declare that the aforesaid will made in the year 1813, by him, devising all his property as aforesaid to your oratrix, the said Myra, was his last will and testament, and was then contained in a

black case in his office room in the house in which he was at the time, and in which he died almost at the moment of making the said declaration in favor of your oratrix, the said Myra.

And that the said Daniel Clark, upon making the said will of 1811, delivered it to the said Richard Relf and Beverly Chew, or one of them, and allowed it to remain in their keeping from thenceforth; that the said Daniel Clark was very extensively engaged in mercantile and other business and speculations, and possessed of a vast amount of property, and *and* that the said Richard Relf acted as his agent in relation to many of the transactions and affairs in which he, the said Daniel Clark, was engaged; that at and immediately before the time of the death of the said Daniel Clark, the said Richard Relf assumed to direct the domestic arrangements of the said Daniel Clark's dwelling-house, and took upon himself the sole control of the household and the affairs of the said Daniel Clark; and that instantly, upon the said Daniel Clark, all the books, papers, letters, documents, and all deeds and writings, of what nature soever, belonging to the said Daniel Clark, came into the sole possession of him, the said Richard Relf.

And it is further expressly charged, that the said will of 1813, made by the said Daniel Clark in favor of the said Myra, came into the possession of the said Richard Relf immediately upon the death of the said Daniel Clark, and that the said Richard Relf fraudulently concealed, suppressed, or destroyed the same, and did substitute in its place or stead the said old revoked will of 1811, in which he, the said Richard Relf, was named an executor, and that the said last will of 1813 was never seen by any one after the death of the said Daniel Clark, except by the said Richard Relf and Beverly Chew, and their confederates.

And it is expressly charged, that the said Richard Relf did fraudulently cause the said old revoked will, made in 1811, to be admitted to probate in the probate court for the parish and city of New Orleans, and procured himself, the said Richard Relf, to be sworn and authorized by the said probate court as the testamentary executor of the said Daniel Clark, to wit, in the month of January, 1814, procure himself to be sworn and authorized by the said court of probates for the parish and city of New Orleans, to act as testamentary executor of the said Daniel Clark under the said revoked will of 1811; and further, that when the said Richard Relf and Beverly Chew took upon themselves the office of testamentary executors of the said Daniel Clark, as aforesaid, there was no relative, or any person claiming to be heir of the said Daniel Clark, in the State of Louisiana; that your oratrix was then an infant, under the age of seven years, and resided at that time in the city of Philadelphia, in the State of Pennsylvania, with the family of the said Samuel B. Davis; and that Mary Clark, the mother of the said Daniel Clark, who was named, as aforesaid, devisee of the said Daniel Clark in the said old revoked will of 1811, was also then a resident of the State of Pennsylvania, and continued to reside there until her death, which happened some years after the death of the said Daniel Clark. That the said Daniel Clark was a native of

Ireland, from which country he emigrated to Louisiana, as your oratrix was informed and verily believed, in or about the year 17 , and that all his immediate relations and family resided, at the time of his death, either in Ireland or in the State of Pennsylvania, and that none of them ever visited Louisiana until many years after his death; that the said Richard Relf and Beverly Chew fraudulently possessed themselves, immediately after the death of the said Daniel Clark, of the personal estate, effects, and credits of the said Daniel Clark to a great amount, and into the receipts of the rents and profits thereof, by falsely and fraudulently representing the said estate to be insolvent; and by other fraudulent means continued, and were enabled to continue, and had ever since continued, and then were, in such possession, or in possession of a large portion thereof; and that also the said Richard Relf and Beverly Chew made sales of the property and effects, real and personal, of the said Daniel Clark, and had received very large sums of money, amounting to several hundreds of thousands of dollars from the said estate, real and personal, and had retained in their hands, or otherwise appropriated or disposed of, the same for their own uses and purposes; and that in all such actings and doings, and in all the matters relating to the said estate, they, the said Richard Relf and Beverly Chew, had acted fraudulently, and without the knowledge, consent, or approbation of your oratrix, or of any other person or persons having a right, or being duly and legally authorized, to sanction, consent to, or approve of the same.

And further, that from and after the time of the death of the said Daniel Clark, and until about the year 1832, when your oratrix became the wife of the said William Wallace Whitney, your oratrix, the said Myra Clark, continued to reside in the family of the said Samuel B. Davis, who lived during all, or nearly all, that time in the State of Pennsylvania; and it is expressly charged that during the lifetime of the said Daniel Clark, the father of your oratrix, the said Myra, your oratrix was always known and called by her true and rightful name of Myra Clark, and by no other name; and that from and after the death of the said Daniel Clark, until at or about the time of the marriage of your oratrix, the said Myra, with the said William Wallace Whitney, your oratrix, the said Myra, was designated, and called in the family of the said Samuel B. Davis, by the name of Myra Davis, and by no other name, and was kept in ignorance of her real name, parentage, and true history, and of her rights and her title to the inheritance and possession of the estate of the said Daniel Clark; and was consequently unable, during all that time, to take the necessary measures for asserting her title to the said inheritance of her father, the said Daniel Clark; that at or about the time of the marriage of your oratrix, the said Myra, with the said William Wallace Whitney, your oratrix was brought by accident to the discovery of her true name and parentage, and was subsequently made more fully acquainted with the circumstances of her history and rights by the said Samuel B. Davis and others; and that your oratrix had, ever since the

time of the said marriage of your oratrix with the said William Wallace Whitney, been, and was then, actively engaged in endeavoring to establish the legal rights and claims of your oratrix, the said Myra, to the property and estate, real and personal, of the said Daniel Clark.

And further that the said Mary Clark died in the year 18 , as your oratrix was informed and verily believed; and that, as your oratrix had been informed and verily believed, the next heirs and relatives left by the said Mary Clark surviving her at her decease, were, besides your oratrix, the said Myra, Eleanor O'Bearne, a daughter of the said Mary Clark, Jane Green, wife of George Green, and daughter of said Mary Clark, and Sarah Cambell, a grand-daughter of the said Mary Clark.

And it is expressly charged, that the said Richard Relf and Beverly Chew, or one of them, did also, immediately upon the death of the said Daniel Clark, possess themselves of all and every of the books and papers of the said Daniel Clark, and of the title deeds of his real estate and other estates.

And it is expressly charged, that your oratrix, the said Myra Clark, was the sole surviving child or descendant of the said Daniel Clark at the time of his death; and that your oratrix, the said Myra Clark, was, upon the death of the said Daniel Clark, entitled, as his forced heiress-at-law, and his universal heiress, by him instituted and appointed in his said last will made by him in 1813, to all the estate real and personal of the said Daniel Clark; and it is also expressly charged that, inasmuch as your oratrix, the said Myra, was the only surviving and legitimate child or descendant of the said Daniel Clark, at the time of his, the said Daniel Clark's, death; and inasmuch as the said last will of the said Daniel Clark, made by him as aforesaid in 1813, was fraudulently concealed, suppressed, or destroyed by the said Richard Relf, as above stated; and also inasmuch as the said old revoked will of 1811, alleged to have been made by the said Daniel Clark in favor of his mother, the said Mary Clark, was produced and procured to be admitted to probate, as the last will of the said Daniel Clark, by such fraud and practice of the said Richard Relf as is hereinbefore stated, that for and notwithstanding the same, the said real and personal estate of the said Daniel Clark, hereinbefore described and enumerated, and all other estates, real and personal, moveable and immoveable, of the said Daniel Clark, descended to and became vested in your oratrix, the said Myra Clark, as the forced heiress-at-law and universal devisee of the said Daniel Clark.

And further, that the said Philip Minor, George Kenner, and Duncan F. Kenner, should be required respectively to surrender and deliver up to your oratrix, the said Myra Clark, the possession of such portion of the real estate owned by the said Daniel Clark at the time of his decease, as by them, or each of them, respectively held, occupied, possessed, or claimed, as owner or otherwise, together with all the title deeds, vouchers, and documents relating to the same, or any part thereof; and severally to come to a just and true account with your oratrix,

for the rents, profits, issues, and services thereof respectively, which had been received or enjoyed by them, or either of them, at any time since the death of the said Daniel Clark; with which just and reasonable requests your oratrix had well hoped the said defendants would have respectively complied, as in justice and equity they ought to have done.

And it was further charged, that the said defendants some times gave out and pretended that the said Daniel Clark never did make and execute the said will of 1813 in favor of your oratrix, as has been above stated, and that the said old will of 1811 was duly made and executed by the said Daniel Clark, and was left by him at the time of his decease unrevoked, and as his true and only last will and testament; whereas it is expressly charged that the contrary of said pretence was true, and that the said Daniel Clark did make and execute the said will, made by him as thereinbefore stated in the year 1813, in favor of your oratrix, and did therein devise and bequeath all his estate, real and personal, to your oratrix, the said Myra Clark; and did also therein and thereby declare your oratrix, the said Myra Clark, to be the legitimate daughter of the said Daniel Clark; and did make and order therein the other dispositions and bequests thereinbefore stated by your oratrix to have been made and ordered by him in the said will, made and executed as aforesaid in 1813, by him, the said Daniel Clark, and that said will of 1813 operated as a full and perfect revocation of the former will alleged to have been made by the said Daniel Clark in 1811, and of every other part and provision thereof; and that the said will of 1811 ought to be set aside, and the said will of 1813 established and confirmed, and the real and personal estate of the said Daniel Clark declared to be descended to your oratrix, the said Myra Clark, as the heir-at-law and devisee of the said Daniel Clark.

And that at other times the said confederates would allege that some doubts had arisen concerning the legitimacy of your oratrix, the said Myra Clark, and pretended that the said Daniel Clark was never married to Zuline née Carriere, by whom he had your oratrix, the said Myra Clark, and that the said Zuline née Carriere was the lawful wife of one Jerome de Grange, who was still living when she became the mother of your oratrix by the said Daniel Clark; and that therefore, upon the death of the said Daniel Clark, the equitable and legal interest in all the said real and personal estate and slaves descended to and became vested in the said Mary Clark as his forced heir-at-law; and that it is expressly charged the contrary of all such pretences and allegations was true, and that your oratrix, the said Myra Clark, was the legitimate child of the said Daniel Clark, and that the said Daniel Clark was married to, and was the lawful husband of, the said Zuline née Carriere, at and before the time when she became the mother of your oratrix, the said Myra, by the said Daniel Clark; and that the said Zuline née Carriere was not, and never had been, the wife of Jerome de Grange at any time, or of any other man than the said Daniel Clark, when she became the mother of your oratrix, the said Myra

as aforesaid; and that if any marriage ever did take place between the said Zuline and the said De Grange, the same was utterly null and void from the beginning, on the ground that the said Jerome de Grange, at the time of his contracting such marriage (if he did contract the same) with the said Zuline, was the lawful wedded husband of another woman, to whom he had been previously married, and who was still living, all of which the said confederates would at other times admit; but then they pretended that the said Richard Relf and Beverly Chew made sales of the said real and personal estate, and the said slaves of the said Daniel Clark, as testamentary executors of a will of the said Daniel Clark which had been admitted to probate in the probate court for the city and parish of New Orleans, and as the attorneys in fact of the said Mary Clark, the devisee in said probated will named; and that the purchasers of the said real and personal estate of the said Daniel Clark, at the said sales thereof, did become such purchasers for full and valuable considerations, and without notice of any revocation and invalidity of the said probated will, alleged to have been made by the said Daniel Clark in 1811, and in which the said Richard Relf and Beverly Chew were named executors, and without notice of the rights or claims of any other person than the said Mary Clark to the said estate of the said Daniel Clark, or any part thereof; and therefore they insisted, that although the said will of 1811 might not have been the last will of the said Daniel Clark, and although your oratrix, the said Myra, might have been the true and lawful heiress of the said Daniel Clark, yet they should not be affected thereby, and that the titles acquired by the said purchasers, under the said sales made of the said real and personal estate and slaves of the said Daniel Clark, by the said Richard Relf and Beverly Chew, were good and perfect titles, and could not be invalidated or disturbed in any manner by the revocation or invalidity of the said will of 1811, or of any claim or claims, or title, which your oratrix, the said Myra, might have had, or then had, to the said estate and slaves, or any portion thereof; whereas it is expressly charged that the contrary of all such pretensions was true, and that the said Richard Relf and Beverly Chew did not, nor did either of them, act in their said assumed capacities of pretended executors of a will of the said Daniel Clark, and attorneys of the said Mary Clark, legally; nor did they or either of them, when acting in both or either of such assumed capacities, observe or comply with the formalities, or adopt the measures, prescribed by law, as requisite to give any validity or authority to any act or acts done or assumed to be done by them in such assumed capacities of executors or attorneys, in relation to the said real and personal estate and slaves of the said Daniel Clark; that a true and faithful inventory, and a just appraisement by two duly appointed and sworn appraisers of the said real and personal estate of the said Daniel Clark, had not been made or caused to be made according to law, by the said Richard Relf and Beverly Chew, or either of them, before the said sales were made; that proper and legal orders to sell were not obtained by the said Richard Relf and Bev-

erly Chew, or either of them, from the judge authorized to grant or make such orders, before the said sales were made; that all or nearly all the said sales were made by private contract, and not at public auction, as they should according to law have been made; and that the moneys severally paid by the said purchasers, for the portions sold to them respectively, of the said real and personal estate and slaves, by the said Richard Relf and Beverly Chew, or either of them, were not respectively full and valuable considerations for said portions of said real and personal estate and slaves; that many of said sales were made by the said Richard Relf and Beverly Chew, as pretended testamentary executors after the year of testamentary execution had expired, and when they had not, nor had either of them, been continued by the order of any judge or court of competent authority in their said functions of executors; that the said Richard Relf and Beverly Chew, had not, nor had either of them, caused themselves, or either of them, to be duly recognised by a court of competent authority, as the attorney or attorneys of the said Mary Clark; and that all acts of the said Richard Relf and Beverly Chew, in relation to the estate of the said Daniel Clark, were upon the face of the proceedings in the foregoing, and in many other respects, illegal and informal, and fraudulent and void, by the laws of the land, and so they were necessarily known to be by the said purchasers at the said sales; and that the making, execution, and existence of the said last will of the said Daniel Clark, made by him in 1813, and its fraudulent concealment, suppression, and destruction at his death, by the said Richard Relf, were notoriously known and reported at the time in Louisiana; and that the said purchasers, on the occasion of the making of the sales aforesaid, and afterwards, and their heirs and assigns, had some knowledge, notice, information, belief, or suspicion, or reason for belief or suspicion, and did in their consciences believe or suspect, that the said Richard Relf and Beverly Chew had acted fraudulently, improperly, and against equity and good conscience, in procuring to be admitted to probate the said will alleged to have been made by the said Daniel Clark in 1811, and in having procured the appointment of themselves, the said Richard Relf and Beverly Chew, by the probate court, as executors of the said will of 1811, and representing the said real and personal estate of the said Daniel Clark to have been devised to and inherited by the said Mary Clark; all which the said confederates would at other times admit; and then they would pretend that they had delivered or sent to your oratrix full, true, and just accounts of the said real and personal estate and slaves of the said Daniel Clark, and all of the rents, profits, issues, and services thereof, and of all the business or concerns appertaining or relating thereto; whereas it is expressly charged that the contrary of such pretence was true, and that the said confederates had not, nor had either of them, delivered or sent to your oratrix any account whatever; all of which actings, and doings, and pretences tended to the manifest wrong and injury of your oratrix, and were contrary to equity and good conscience. And it is further charged, that the said

Eleanor O'Bearne, George Green and Jane Green, his wife, and Sarah Cambell, if then living, were aliens, and subjects of the king of Great Britain and Ireland. And in the said bill it was prayed that the said Richard Relf, Beverly Chew, Eleanor O'Bearne, George Green and Jane Green, his wife, Sarah Cambell, Phillip Minor, George Kenner, Duncan F. Kenner, and other defendants therein named, might, without oath, full, true, direct, and perfect answer make, your oratrix thereby expressly waiving the necessity of making such answer upon the oath of the said defendants, or of either of them, to all and singular the matters and things thereinbefore stated and charged, as fully and particularly as if the same were thereinafter repeated, and they, and each of them, thereunto distinctly and specifically interrogated; and that not only as to the best of their, and each of their, respective knowledge and remembrance, but also as to the best of their respective information, hearsay, and belief; and that the said defendants might also severally set forth what right, title, or interest they respectively had or claimed in or to the real and personal estate and slaves of the said Daniel Clark, or any and what part thereof, and how and in what manner they derived and made out the same, and by and under what deed or deeds, writing or writings, and might set forth the date and contents of all such deeds and writings. And that the said Richard Relf, Beverly Chew, Eleanor O'Bearne, George Green and Jane Green, his wife, Sarah Cambell, Phillip Minor, George Kenner, Duncan F. Kenner, and the rest of the defendants, might answer the premises; and that the said will, made by the said Daniel Clark in the year 1813, in which he devised all his estate as aforesaid to your oratrix, the said Myra, and the provisions and dispositions thereof, be carried into execution by and under the decree of the honorable court, and the rights and interests of your oratrix under the same be declared and secured; and that it might be declared that the said will alleged to have been made by the said Daniel Clark in 1811, had been utterly revoked and declared to be good for nought by him, the said Daniel Clark, in his lifetime; and that the said will, so alleged to have been made by the said Daniel Clark in 1811, was in fact and in truth utterly void and of no effect; and that the said will, made as aforesaid by the said Daniel Clark in 1813, was duly made and executed by him, the said Daniel Clark, with all the formalities and other requisites necessary for passing real and personal estate by devise, and that it was the only true and valid will of the said Daniel Clark, and contained a good and valid devise and bequest of all the real and personal estate and slaves of the said Daniel Clark to your oratrix, the said Myra Clark; and that in and by the same he, the said Daniel Clark, did acknowledge and declare your oratrix, the said Myra Clark, to be the legitimate daughter of him, the said Daniel Clark; and that the said Daniel Clark departed this life on or about the 16th day of August, 1813, without altering or revoking his said will so made by him as aforesaid in the year 1813, and containing the said devise to, and the said declaration of acknowledgment of the legitimacy

of, your oratrix, the said Myra, made as aforesaid by the said Daniel Clark in his said last will made by him in the year 1813, and that the said declaration or acknowledgment of the legitimacy of your oratrix, the said Myra, made as aforesaid by the said Daniel Clark, in his last will made by him in the year 1813, was a full and perfect and effectual act of legitimation of your oratrix, the said Myra Clark, if any such act would have been necessary to establish the legitimacy of your oratrix, the said Myra; and that it vested in your oratrix all the rights, capacities, and privileges of a legitimate child; and also that it might be declared that your oratrix, the said Myra, was the legitimate child of the said Daniel Clark, and that the said Daniel Clark was the lawful husband of the said Zuline née Carriere, the mother of your oratrix, the said Myra, at and before the time when she, the said Zuline, became the mother of your oratrix, the said Myra, by the said Daniel Clark; and that it might be declared that all and every of the said sales of the said real and personal estate and the said slaves of the said Daniel Clark, made by the said Richard Relf and Beverly Chew, or by either of them, as the executor or executors of the said revoked will of 1811, or as the attorney or attorneys of the said Mary Clark, or in any other capacity, are null and void and of no effect; and that the said real and personal estate and slaves of the said Daniel Clark descended to your oratrix, the said Myra, upon the death of the said Daniel Clark, as his, the said Daniel Clark's, devisee and heir-at-law; and that the said Richard Relf, Beverly Chew, Eleanor O'Bearne, George Green and Jane Green, his wife, Sarah Cambell, Phillip Minor, George Kenner, and Duncan F. Kenner, might be decreed to deliver up to your oratrix the possession of all the said real estate and slaves thereinbefore enumerated and described, and then held and possessed, or claimed to be held and possessed, by them, or either of them, jointly or severally, or in any other manner, as owners or otherwise; and to come severally to an account with your oratrix for the rents, profits, issues, and services of the said real estate and slaves of the said Daniel Clark, which had been possessed or received by the said defendants, or any of them, or by any other person or persons by their or either of their order, or for their or either of their use, since the death of the said Daniel Clark; and respectively to pay over to your oratrix whatever should be found due from them, or any of them, upon the taking of such account; and that in the taking of such account the said defendants might respectively be charged with interest for such balance as should appear to have been in their hands from time to time; and that the said defendants might be respectively decreed to deliver up to your oratrix all deeds and other writings in their hands relating to the said real and personal estate and slaves of the said Daniel Clark; and that oratrix might have such further or other relief in the premises as the nature of the case might require, and as might seem meet to this honorable court, and agreeable to equity and good conscience.

And your orator and oratrix further show unto your honors, that on

the 12th day of December, 1837, in this honorable court, the death of the said William Wallace Whitney, the then husband of your oratrix, having been suggested to the court, it was ordered that this suit be continued in the name of your oratrix. And that on the 24th day of May, 1839, it was shown to this honorable court, by way of supplement to said bill that, your orator and oratrix having become united by the bonds of matrimony, it was ordered that this suit stand and be proceeded in in the names of your orator and oratrix. And your orator and oratrix further show, that the said defendants, Richard Relf, Beverly Chew, and several other defendants in said original bill, being duly served with process, appeared to the said bill of your orator and oratrix, and filed demurrers thereunto, which said demurrers were argued on appeal in the Supreme Court of the United States, and were overruled in said court, and defendants were required to answer to said bill of complaint.

And that the said court directed the said bill of complaint to be amended in two points, which were made by said demurrers, that is to say, the said Relf and Chew should not be called upon to account in and by said bill; and that in the aspect in which your oratrix was presented to said court in said bill, as the universal instituted heir of said Daniel Clark, under the will of 1813, as aforesaid, she could not make the said Caroline Barnes and her husband parties to said bill as defendants, she, the said Caroline, being a legatee in said will of 1813. That, in these two points, the then counsel of your orator and oratrix attempted to amend the said bill; but your orator and oratrix charge, that the paper filed by their then counsel in 1844 did not accomplish the purpose designed by such an amendment. That afterwards, the said Relf and Chew, and Caroline Barnes and others, filed answers to said bill, as intended to have been amended, in which they insisted, for their defence in part, upon the matters which should have been avoided by said amendment. And your orator and oratrix further show unto your honors, that, to the answers of said Relf and Chew, and the others of the defendants who have answered, replications have been filed.

And your orator and oratrix further show unto your honors, by way of amendment to said bill, that they will renounce, for all the purposes of this suit against the defendants herein named, all claim which your oratrix has heretofore made to the estate of said Daniel Clark, as his instituted and universal heir and devisee by the said will of 1813; and that she will, as against the defendants herein named, assert and maintain her right, title, and equity to the four-fifth parts of the property and rights embraced in this amended bill and supplement, as the forced heir of said Daniel Clark, deceased, within and according to the tenor and effect, meaning and intent, of the law of the State of Louisiana, in such case made and provided, in force at the time of the death of said Daniel Clark. But your oratrix and orator expressly charge, that they shall at all times insist upon the fact, that said will of 1813, as stated in said original bill, was made by said Daniel Clark, and was suppressed or destroyed as also therein stated; so far as any

thing was in said will contained declaring the legitimacy of your oratrix as the only child of the said Daniel Clark, born in lawful wedlock with said Zuline née Carriere, and no further or otherwise; your orator and oratrix being willing and content, that the said defendants in this amended bill and supplement, as regards the property herein described, should enjoy according to their respective rights, the other one-fifth or disposable portion of the estate of said Daniel Clark herein embraced; and your orator and oratrix further show, and charge, that all the matters herein stated to be contained in the said original bill of complaint are true, and will be herein and hereby maintained, except so far as the matters stated in the last preceding paragraph. And your orator and oratrix further show unto your honors, by way of supplement, that the said original bill of complaint was brought to a hearing upon the matters therein contained, and which matters are substantially herein recited and insisted upon, and upon the answer of Charles Patterson, one of the defendants therein, in this honorable court, and decree therein rendered, on the twenty-fifth day of April, 1840, in favor of the claims and pretensions of your oratrix, in the words following, to wit:

"This cause, having come for final hearing by consent of the complainants and the defendant, Patterson, upon the bill, answer, replication, exhibits, depositions, and documents on file herein, and on the admission of the parties that the estate in controversy in this case exceeds in value the sum of two thousand dollars; and the said complainants and the defendant, Patterson, expressly waiving and dispensing with the necessity of any other parties to the hearing or decision of this cause than themselves, and agreeing that the cause shall be determined alone upon its merits; and the court being now sufficiently advised of and concerning the premises, does finally decree and order, that the defendant, Patterson, do, on or before the first day of the next term of this court, convey and surrender possession to the complainant, Myra Clark Gaines, all those lots or parcels of land lying and being in the city of New Orleans, and particularly described in this answer and exhibits, and to which he claims title, under the said will of 1811; said conveyance shall contain stipulations of warranty against himself only, and those claiming under him. It is further decreed and ordered, that the defendant pay the complainants so much of their costs, expended herein, as has been incurred by reason of his being made a defendant in this cause.

From which decree the defendants prayed an appeal to the Supreme Court of the United States, which was granted. And your orator and oratrix further show unto your honors, that the said order and decree of this court was appealed from by the said Patterson to the Supreme Court of the United States; whereupon, after hearing upon said appeal, the said court, at the January term thereof, in the year 1848, made the following decree, to wit: We shall direct the decree of the court below to be reversed, and adjudge that a decree shall be made in the said court in this suit, declaring that a lawful marriage was con-

tracted in Philadelphia, Pennsylvania, between Daniel Clark and Zuline Carriere; and that Myra Clark, now Myra Gaines, is the lawful and only child of that marriage; that the said Myra is the forced heir of her father, and is entitled to four-fifths of his estate after the excessive donation in the will of 1811 is reduced to the disposable quantum which the father could legally give to others; "that the property described in the answer of the defendant, Mr. Patterson, is a part of the estate of Daniel Clark at the time of his death; that it was illegally sold by those who had no right or authority to make a sale of it; that the titles given by them to the purchaser and by the purchaser to the defendant, Mr. Patterson, including those given by the buyer from the first purchaser to Mr. Patterson, are null and void; and that the same is liable, as a part of the estate of Daniel Clark, to the legitime of the forced heir; and that the defendant, Charles Patterson, shall surrender the same, as shall be directed among other things to be done in the premises, as will appear in the decree and mandate of this court to the circuit court in Louisiana." To which said decree your orator and oratrix pray leave to refer, and that the same may be made a part of this bill. And your orator and oratrix further show unto your honors, and charge that, by said order and decree, your oratrix as to the said Relf and Chew, and all persons holding under them, any portion of the estate or property and rights claimed herein and hereby, that although the said Relf and Chew were neither of them nominal parties to said decree, yet they and each of them, as well as the said defendant, Geo. Kenner and Duncan F. Kenner, were, and each of them are, bound and concluded by said decree, they and each of them holding the same relation to your oratrix as the said Charles Patterson, and they and each of them having joined in the interrogatories propounded to the witnesses, upon whose testimony said decree was rendered, and propounded cross interrogatories to said witnesses, and each of them, as your orator and oratrix expressly charge. And your orator and oratrix, for greater certainty respecting the matters herein last above stated, pray leave to refer to the record and decree in this honorable court in the case of your orator and oratrix against Charles Patterson, and entitled on appeal in the Supreme Court aforesaid, Patterson against your orator and oratrix, and the decree of said court therein, and that said decree and record be made a part of this amended bill and supplement. And your orator and oratrix further show unto your honors, by way of supplement, that the said Phillip Minor departed this life on or about the day of September, 1836, without having been served with process of subpœna to appear and answer in this cause, or having appeared thereto. And your orator and oratrix further show unto your honors, by way of supplement, that the said Phillip Minor died leaving a last will and testament, which was admitted to probate, and recorded in the office of the court of probates in the parish of Ascension, in the State of Louisiana, where the said Phillip Minor died, and where the property herein described is situated, on the 17th day of September, in the year 1836. That letters of administration were thereupon granted in due form of law by said court unto

Theophilus P. Minor, late of said parish, now deceased, the testamentary executor of said Phillip Minor, named in said will. That all and singular the interest of the said Phillip Minor in and to the said property herein described, was by his said will devised and bequeathed unto the said defendants, John S. Minor, J. R. Minor, James P. Minor, the children of the said Theophilus P. Minor, subject to a charge thereupon of sundry legacies named in said will, as will more fully and at large appear by a duly authenticated copy of said will of said Philip Minor filed herewith, and which your orator and oratrix pray may be made a part hereof. And your orator and oratrix further show unto your honors, that the interest of the said Phillip Minor at the time of his death in and to the said property herein described, was one equal undivided moiety or half part thereof, as your orator [and] oratrix are informed and verily believe. That said property herein described and claimed in this bill was originally purchased, as before mentioned, on the 2d day of August, 1816, by said Phillip Minor and William Kenner jointly and in equal portions, as by act hereunto annexed, marked in schedule B, to which your orator and oratrix pray leave to refer, will appear; that said William Kenner died leaving his children and heirs, the said George Kenner, Duncan F. Kenner, Minor Kenner, and Mrs. Currie Duncan, lawfully possessed thereof in common. That said George Kenner, by public act, conveyed his interest in and to said property to said Duncan F. Kenner in March in 1844, before Christy, notary public, as by act hereto annexed, and marked in schedule C. That said Mrs. Currie Duncan conveyed her interest to said Minor Kenner, by act before Stringer, notary public, in February, 1832, as by a copy of said act, marked in schedule D, filed herewith, will more fully appear. That the said Phillip Minor, deceased, sold one-fourth of his interest to Minor Kenner in January, 1830, by act before Duffel, as by a copy of said act filed herewith, marked in schedule E, will more fully appear; and that in March, 1832, said Phillip Minor, now deceased, purchased of said Minor Kenner one equal undivided moiety or half part of all said property so as aforesaid sold by said Relf and Chew to said William Kenner and Phillip Minor, as by a copy of said act filed herewith, and marked in schedule F, will more fully appear. And your orator and oratrix further show and charge that, by means aforesaid, the said John S. Minor, Phillip T. Minor, Harry Minor, William N. Minor, Francis E. Minor, Julia N. Minor, and Laura P. Minor, the instituted heirs of said Phillip Minor, deceased, became and they now are the owners and possessors of the equal undivided moiety or half part of the said property herein described and claimed by your oratrix as aforesaid, and that the said Duncan F. Kenner became as aforesaid, and is now, as your orator and oratrix charge, the owner and possessor of the other equal undivided moiety or half part thereof.

And your orator and oratrix further show unto your honors, and charge, that the said defendants herein named have and do now enjoy the rents, issues, and profits of said property, during and from the re-

spective dates and times aforesaid, of their respective interests and ownership, and of right ought to be held accountable to your oratrix therefor respectively. And your orator and oratrix further show unto your honors, and charge, that the said Theophilus P. Minor, the executor of the said Philip Minor, and the father of the said defendants, John S. Minor, J. R. Minor, James P. Minor, herein, on or about the 23d day of November, 1845, on behalf of himself and his said children, appeared in this cause by Isaac T. Preston, esquire, as their solicitor, and filed demurrers and answers to said bill, but the same have never been brought to a hearing; and that said Preston is an admitted attorney and counsellor at law in the supreme court of the State of Louisiana, and a solicitor and counsellor in this honorable court, and acted in behalf of the aforesaid defendants with their full knowledge and authorization; that the said Theophilus P. Minor, as the natural tutor of his said children, in a legal and proper manner, caused them to appear and be duly represented in this suit as aforesaid. And your orator and oratrix further show unto your honors, that the said Theophilus P. Minor departed this life some time in the year 1847, but at what precise time your orator and oratrix are now uninformed, and leaving his children, the said John S. Minor, J. R. Minor, James P. Minor, surviving him. And your orator and oratrix further show unto your honors, that the rents, issues, and profits of the said property herein described, do now, and for many years past have, amounted to the sum of twenty thousand to thirty thousand dollars per annum, over and above all necessary outlays and expenses in the use and cultivation thereof. And your orator and oratrix further show unto your honors, that the said Jane Green, since the filing of the said original bill of complaint, has departed this life, and left one or more heirs, whose names are at present unknown to your oratrix and orator, but whose residence is in Liverpool, England; and that the said Eleanor O'Bearne has also, since the filing of said original bill, departed this life, and has left heirs, who now reside in the city of St. Louis, State of Missouri; and that the said Sarah Campbell resides in the State of Pennsylvania, and is a citizen of said State; and that Caroline Barnes, late of St. Louis, in the State of Missouri, wife of Dr. John Barnes, has, since the filing of said original bill, departed this life, and has left children and heirs surviving her, who reside at St. Louis aforesaid; that each of said persons last named claims to be entitled, as the heir and devisee of Mrs. Mary Clark, deceased, to all and singular the estate, right, title, and interest which she, the said Mary Clark, at any time had in and to the succession of the said Daniel Clark, deceased; and that as to the one-fifth part of the property, herein described, as being a part and parcel of the said succession of said Daniel Clark, deceased, your orator and oratrix will hereby recognise, for all the purposes of this suit, the claims of said heirs and devisees to said one-fifth part of said property, rights, and equities herein set forth, as far as your orator and oratrix are concerned, or have any interest in opposing the claims and pretensions of

the said heirs and devisees of said Mary Clark. And your orator and oratrix further show unto your honors, and charge, that the said George Kenner resides without the jurisdiction of this court, to wit, in the State of Texas; and, consequently, cannot be made a party to this amended and supplemental bill. And your orator and oratrix further show unto your honors, and expressly charge, that the defendants herein named, the heirs of William Kenner, deceased, and the heirs of Phillip Minor, deceased, have respectively possessed, occupied, and enjoyed some portion of the said property herein claimed by your oratrix, and have received some portion of its rents, issues, and profits, respectively, for many years past; for which use and occupation, rents, issues, and profits, they ought of right to account to your oratrix to the extent of four-fifth parts thereof. And your orator and oratrix further show unto your honors, that the said Caroline Barnes, during her lifetime, did sometimes give out and pretend, and that her said heirs do now give out and pretend, that she, the said Caroline Barnes, was the illegitimate daughter of said Daniel Clark, begotten with the said Zuline, the mother of your oratrix, during the coverture of the said Zuline with said Jerome Degranges; and that the said Caroline Barnes was afterwards made legitimate by the marriage of the said Daniel Clark with said Zuline at Philadelphia, as in this bill stated; and that, by said marriage, she, the said Caroline, became, and that her said heirs are now, entitled equally with your oratrix to the estate of the said Daniel Clark, deceased; all which pretences of the said Caroline Barnes, and of her heirs, your orator and oratrix charge to be without foundation in truth; on the contrary, they expressly charge the fact to be, that the said Caroline Barnes was the daughter of said Jerome de Grange, the offspring of his unlawful and void marriage with said Zuline. That your orator and oratrix are free to admit that the said Daniel Clark, after his marriage with said Zuline, finding the said Caroline without a paternal protector, did, from his ample means, provide in a generous and noble manner for the respectable support and education of the said Caroline during his lifetime, and by a legacy to her after his death; and further, that, by reason of the infamy which attached to the name which she inherited, he, the said Daniel Clark, permitted her, the said Caroline, to bear, and be known by, his own name, which was a sure guarantee to her of access to any society to which she might aspire.

And your orator and oratrix further show unto your honors, that the said Richard Relf and Beverly Chew sometimes give out and pretend that they are justly entitled, as partners in trade, or otherwise, with the said Daniel Clark during his lifetime, each of them, to one equal one-third part of all and singular the estate, real and personal, which the said Clark left at his death in his own name, or otherwise, (with some small exceptions;) and, as a proof of such claims and pretensions, the said Richard Relf and Beverly Chew, and their confederates, pretend to have in their possession, or the possession of one of them, a certain instrument in writing, purporting to have been executed by said Relf, Chew, and Daniel Clark, some time in the year 1813, and within two

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months of the death of said Daniel Clark; but your orator and oratrix expressly charge the fact to be, that said pretensions of said Relf and Chew are wholly without foundation in truth; and your orator and oratrix have good reason to believe, and do believe, that said instrument in writing is a forgery, got up by some one unknown to your orator and oratrix, for the purpose of defeating the just claims of your oratrix in the premises.

And your orator and oratrix further charge that, if said instrument should be shown to this honorable court to be genuine, and to have been executed in all respects as it purports, the same is without legal or equitable force or effect, for reasons apparent upon the face thereof, and was at all times, and is known by said Relf and Chew, and each of them, to have been and to be without such effect, as is clearly shown in all the transactions of said Relf and Chew, and each of them, by the fact that in no instance, in their whole course of unlawful proceedings in regard to the succession of said Daniel Clark, is the said instrument in writing alluded to, nor has any act of theirs, in said regard, indicated in its details or results the honest confidence of said Richard Relf and Chew, or either of them, in the legal or equitable effect of said instrument for any purpose which it purports to have designed; and for greater certainty as to the statement and charges of your orator and oratrix, with respect to the inherent defects and vices apparent upon said contract, they pray leave to refer to the same, should it be produced by said defendants, and attempted to be set up for any purpose in their defence hereto, that the said defendants may, if they can, show why your orator and oratrix should not have the relief prayed in said original bill, and in this amended and supplemental bill; and may without oath, which is hereby expressly waived, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by note here under written they are respectively required to answer; that is to say:

Interrogatory 1. What amount per annum has been derived from the plantation, herein described, by way of revenue, exclusive of the cost of working the same, since it came to the possession of the said William Kenner, deceased, and Philip Minor, deceased? State, from the best means in your power, how much have been the gross products in each year, and the gross outlays, and whether such outlays have been by way of necessary clearing, ditching, or other improvements, or the ordinary cost of working said plantation.

Interrogatory 2. What portion of said plantation was inherited by each of the defendants, the heirs of William Kenner, deceased, respectively?

Interrogatory 3. What portion of the revenues, issues, and profits, has been received at any and what time by the said heirs of William Kenner, deceased, respectively; and what amount?

Interrogatory 4. What portion of said plantation has at any time,

and when, been owned, possessed, or enjoyed, by the said defendants, the testamentary and instituted heirs of Philip Minor, deceased, respectively; and what portion is now possessed or enjoyed by them, respectively, and what portion of the revenues, issues, and profits, they have at any time received, and do *and do* now receive?

Interrogatory 5. What are the names and ages, respectively, of the testamentary heirs of said Philip Minor, deceased, who now claim any interest in said plantation, and where do they reside; if any are under age, who is their tutor or tutors?

And your orator and oratrix pray, that by the order and decree of this honorable court, your oratrix may be adjudged and decreed to be lawfully entitled, as forced heiress of the said Daniel Clark, deceased, to four-fifth parts of the said plantation herein described, and four-fifth parts of the revenues derived therefrom, since the pretended sale thereof by said Relf and Chew, to said Kenner and Minor, deceased, to the termination of this suit; and that the several defendants herein named, who have at any time derived such revenue, may respectively account for such portion as each has received; and that the defendants now in possession thereof may be compelled to pay to your oratrix the ascertained value of four-fifths of said plantation, or surrender the said portion to your oratrix; and that the sale made by said Relf and Chew to said William Kenner, deceased, and Philip Minor, deceased, may be decreed and adjudged to be wholly void and of no effect as to any rights of your oratrix, in this bill set forth, as the forced heiress of said Daniel Clark, deceased; and that it may be decreed by this honorable court, that your oratrix is entitled to have the same relief, against the said heirs of Philip Minor, as was originally prayed against the said Philip Minor, and the same benefit of the original writ, and all proceedings therein, as she might have had against the said Philip Minor if he had appeared to your oratrix's bill, and were now living. And that the said heirs of Mrs. Mary Clark may be decreed to have no claim to said plantation herein described, except to the extent of one-fifth part thereof, and of its revenues, as against the rights and equities of your oratrix; and that your oratrix may have such further or other relief in the premises, as the circumstances of her case may require, and to your honors may seem fit and meet.

May it please your honors to grant unto your orator and oratrix the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said Richard Relf, Beverly Chew, Duncan F. Kenner, Minor Kenner, Mrs. Currie Duncan, and her husband, John S. Minor, Myra F. Minor, and Philip S. Minor, Harry Minor, William N. Minor, Francis E. Minor, Julia N. Minor, and Laura P. Minor, infants under the age of twenty-one years, commanding them, and each of them, by a certain day, and under a penalty therein to be inserted, to be and appear in this honorable court, then and there to stand to, and abide by, such order and decree therein, as to your honors may seem meet, and agreeable to equity and good conscience. And that if the said George Kenner, the heirs of said Jane Green, the heirs

of said Eleanor O'Bearne, the heirs of said Caroline Barnes, the said Sarah Cambell, or either of them, shall at any time be found within the jurisdiction of this honorable court, they, or either of them, may be in like manner commanded as above prayed.

And your orator and oratrix will ever pray, &c.,

P. C. WRIGHT,
Solicitor and counsel for complainants.

NOTE.—Each of the defendants in the foregoing bill, except Relf and Chew, are required to answer to the interrogatories 1, 2, 3, 4, and 5, therein contained.

P. C. WRIGHT,
Solicitor for complainants.

Exhibits referred to in the foregoing amended bill.

1st exhibit.—Will of Philip Minor.

Will of Philip Minor, dated 11th July, 1836, E. D., United States of America, State of Louisiana.

Be it remembered, that on this eleventh day of July, in the year of our Lord one thousand eight hundred and thirty-six, and in the sixty-first year of the independence of the United States of America, at the request of Philip Minor, a resident of the parish of Ascension, State first aforesaid, I, John H. Ilsley, a notary public, dwelling and duly confirmed and sworn for the parish of Ascension, went to the plantation of the said Philip Minor, situate in said parish, and then and there being, I found the said Philip Minor in a weak state of health, but of a sound mind; and the said Philip Minor did then declare to me, in the presence of Thomas E. H. Cottman, J. Y. Gibson, and John Penny, all freeholders residing in said parish of Ascension, and of the legal age, and in every respect duly qualified in the premises, that he was desirous of making his last will and testament; which in my presence, and in the presence of the above mentioned witness, the said Philip Minor dictated to me word for word as follows, to wit:

I, Philip Minor, being in a feeble state of body, but of a sound mind, do declare this to be my last will and testament, and do hereby will and bequeath my property, real and personal, in the following manner, to wit:

First. I will and bequeath and give unto my negro woman named Lucy, and her five children, William, Adde, Lang, Patrick and Tom, their freedom. Second. I will and bequeath unto Lucy, and each of her children as aforesaid, the sum of two thousand dollars, making the sum of twelve thousand dollars. Thirdly. I hereby appoint and nominate Theophilus P. Minor my testamentary executor. Fourthly. I will and bequeath the sum of five thousand dollars to Minor Kenner, also the sum of five thousand dollars to George R. Kenner, another sum of five thousand dollars to Duncan F. Kenner, and also the sum

of five thousand dollars to Philip Minor Kenner, the son of William B. Kenner. Fifthly. I will and bequeath unto my brother, Theophilus Minor, the sum of five thousand dollars.* Sixth. I wish my executor, and hereby bind him, to pay all the above mentioned legacies in equal payments of one, two, three, four, and five years, making five equal payments; and I also bind him to pay unto each legacy an interest of six per cent. per annum until paid. Seventh. I hereby will and bequeath unto the legal heirs of my executor and nephew, Theophilus P. Minor, all the balance, after paying the above mentioned legacies of my estate, real and personal, wherever it may be found. And the said Philip Minor having declared to me that he had no further bequests to make, I, the said notary, did read aloud to the testator, in presence of the witnesses aforesaid, the above testament as delivered and written by me, as the same was delivered by the testator. In testimony whereof, the said Philip Minor has hereunto subscribed his hand by making a cross as the recognition of his will, as he declares he is unable through weakness to sign his name, in the presence of Thomas G. H. Cottman, J. Y. Gibson, and John Penny, the witnesses aforesaid, who have all hereunto subscribed their names with me, the notary public, all the above formalities having been performed at once without interruption or turning to other acts. Done and passed on the plantation of Philip Minor aforesaid, on the day, month, and year first above written. The original act signed

his
PHILIP ⋈ MINOR,
mark.
THOMAS COTTMAN,
J. Y. GIBSON,
JOHN PENNY,
JOHN H. ILSLEY,
Notary public.

A true copy of the original on record under my hand and seal, at Ascension, this 13th day of August, 1836.

(Signed) JOHN H. ILSLEY, [L. S.]
Notary public.

Recorded by virtue of a decree of the court of probates of the parish of Ascension, State of Louisiana, dated this day. Parish of Ascension, 17th September, 1836. Signed,

EDWARD DUFFEL, *Judge.*

"* and unto my brother, Noah Minor, the sum of five thousand dollars." The above words having been omitted in the copy of the will dated 13th August, 1836, is inserted in this margin, nunc pro tunc, to cover the error, by order of the court of probates, dated 26th March, 1841. Signed, EDWARD DUFFEL, *Judge.*

Clerical error in recording the words "commissioned and upon" to be put in the place of confirmed and swore to.

Signed, EDWARD DUFFEL, *Judge.*

A true copy of the copy of the last will and testament of Philip Minor, as recorded in my office.

In faith whereof, witness my official seal and signature, Ascension, [SEAL.] this 2d June, 1848.

L. D. NICHOLS, *Clk.*

Endorsed as follows: Exhibit A to bill, filed July 14, 1848.

J. M. DOWNS, *D. C.*

Exhibit F, (to bill.)

STATE OF LOUISIANA,
Parish of Ascension.

Be it known, that on this day, the sixth day of January, in the year of our Lord one thousand eight hundred and thirty, the fifty-fourth of American independence, before me, Edward Duffel, parish judge in and for the parish of Ascension, State of Louisiana, ex officio notary public, residing in said parish, and in presence of the undersigned, and hereinafter named witnesses.

Personally came and appeared Philip Minor, residing in the aforesaid parish, a planter, who declares he has sold, bargained, conveyed, and set over, and he does hereby sell, bargain, convey, and set over, from this day forever, unto Minor Kenner, residing in the same parish, here present and accepting for himself, his heir and assigns.

First, the one undivided fourth of a certain plantation, situated in the parish aforesaid, on the left bank of the river Mississippi, about eighty-two miles above New Orleans, and seven miles above the entrance of the bayou Lafourche, and town of Donaldsonville, and known by the name of Linwood plantation, measuring forty two arpents front, more or less, by forty arpents in depth, besides the double concession thereunto belonging; bounded above by lands owned by Henderson and Doyle, and below by lands belonging to Jean Louis Pecon; the said plantation opening in the rear and containing about four thousand two hundred superficial arpens, more or less, together with one undivided fourth of all the buildings, improvements, horses, cattle, implements of husbandry, depending and appertaining, thereunto belonging or in any wise appertaining, such as they now exist on the said plantation, without any exception or reservation.

And secondly, the one undivided fourth of the following slaves: • • • • • • • making together one hundred and eighty-six slaves. The aforesaid undivided fourth of the above described plantation, and one hundred *and one hundred* and eighty-six slaves belong to Philip Minor for having purchased the same, viz: the slaves, jointly, with William Kenner, deceased, and his heirs, at different times and from sundry persons, with which titles the purchaser, Minor Kenner, declares himself satisfied. The seventeen last mentioned slaves, the last bought, were purchased from John Carter, by an act before Carlile Pollock, notary public, at New Orleans, dated the nineteenth day of November, eighteen hundred and twenty-seven;

the others were, some of them, born on the plantation, or have been thereon for more than eight years. The plantation was purchased in the following manner: eighteen and a half arpens front by forty arpens in depth, from Messrs. Beverly Chew and Richard Relf, executors of Daniel Clark, deceased, by an act before John Lynd, a notary public for New Orleans, under date of the second of August, one thousand eight hundred and sixteen; nine arpens ten toises front, by forty arpens in depth, from the same gentlemen as partners trading in New Orleans under the firm of Chew & Relf, by an act before the same notary, and bearing the same date; one arpent and a half by forty in depth from Lufroy Brandt, by act passed before the late judge of this parish, under date of the twenty-second March, eighteen hundred and twenty-four; five arpens front by forty arpens in depth, from widow Barthelemé Hamilton, by act passed before the same judge, on the same day, twenty-second of March, eighteen hundred and twenty-four; five arpens front by forty in depth, from the estate of Jeane Baptiste Laubelle, by probate sale made by the same judge, on the thirty-first of March, eighteen hundred and twenty-one; one and a half arpent front by forty arpens in depth, from Edward Brand, by act passed before the same judge, on the third of April, eighteen hundred and twenty-two; and two arpens front by forty arpens in depth, by an act passed before the same late Judge P. Carley Doutrumer, on the ninth October, eighteen hundred and eighteen; all the above tracts of land were purchased, one-fourth for Philip Minor, and the three other fourths for William Kenner or his heirs. The present sale is made for and in consideration of the sum of fifty thousand dollars, bearing interest at the rate of six per cent. per annum, from the first of April, (1830) eighteen hundred and thirty, and payable in ten equal instalments, whereof the first share fall, due on the first of April, eighteen hundred and thirty-one, and so on successively on the first of April of each and every following year, till the first of April, eighteen hundred and forty inclusively, so that the first instalment shall amount to eight thousand dollars, viz., five thousand dollars principal and three thousand dollars interest; the second instalment shall amount to seven thousand seven hundred dollars, viz., five thousand dollars principal and two thousand seven hundred dollars interest, and so on for the other instalments, the interest decreasing in the same ratio of the principal.

To secure the full and punctual payment of the said sum of fifty thousand dollars, and the interest thereon, in the manner above stipulated, which the purchaser, Minor Kenner, hereby promises and binds himself to pay to the said Philip Minor, he, by these presents, mortgages and hypothecates the above described one undivided fourth of the Linwood plantation, and one hundred and eighty-six slaves above named, hereby confessing judgment for the said sum of money and interest to be paid as aforesaid..

And the said Philip Minor shall and will forever warrant and defend the said undivided fourth of the above plantation and slaves unto the said purchaser, against all disturbances, evictions, debts, mortgages, and

the others were, some of them, born on the plantation, or have been thereon for more than eight years. The plantation was purchased in the following manner: eighteen and a half arpens front by forty arpens in depth, from Messrs. Beverly Chew and Richard Relf, executors of Daniel Clark, deceased, by an act before John Lynd, a notary public for New Orleans, under date of the second of August, one thousand eight hundred and sixteen; nine arpens ten toises front, by forty arpens in depth, from the same gentlemen as partners trading in New Orleans under the firm of Chew & Relf, by an act before the same notary, and bearing the same date; one arpent and a half by forty in depth from Lufroy Brandt, by act passed before the late judge of this parish, under date of the twenty-second March, eighteen hundred and twenty-four; five arpens front by forty arpens in depth, from widow Barthelemé Hamilton, by act passed before the same judge, on the same day, twenty-second of March, eighteen hundred and twenty-four; five arpens front by forty in depth, from the estate of Jeane Baptiste Laubelle, by probate sale made by the same judge, on the thirty-first of March, eighteen hundred and twenty-one; one and a half arpent front by forty arpens in depth, from Edward Brand, by act passed before the same judge, on the third of April, eighteen hundred and twenty-two; and two arpens front by forty arpens in depth, by an act passed before the same late Judge P. Carley Doutrumer, on the ninth October, eighteen hundred and eighteen; all the above tracts of land were purchased, one-fourth for Philip Minor, and the three other fourths for William Kenner or his heirs. The present sale is made for and in consideration of the sum of fifty thousand dollars, bearing interest at the rate of six per cent. per annum, from the first of April, (1830) eighteen hundred and thirty, and payable in ten equal instalments, whereof the first share fall, due on the first of April, eighteen hundred and thirty-one, and so on successively on the first of April of each and every following year, till the first of April, eighteen hundred and forty inclusively, so that the first instalment shall amount to eight thousand dollars, viz., five thousand dollars principal and three thousand dollars interest; the second instalment shall amount to seven thousand seven hundred dollars, viz., five thousand dollars principal and two thousand seven hundred dollars interest, and so on for the other instalments, the interest decreasing in the same ratio of the principal.

To secure the full and punctual payment of the said sum of fifty thousand dollars, and the interest thereon, in the manner above stipulated, which the purchaser, Minor Kenner, hereby promises and binds himself to pay to the said Philip Minor, he, by these presents, mortgages and hypothecates the above described one undivided fourth of the Linwood plantation, and one hundred and eighty-six slaves above named, hereby confessing judgment for the said sum of money and interest to be paid as aforesaid..

And the said Philip Minor shall and will forever warrant and defend the said undivided fourth of the above plantation and slaves unto the said purchaser, against all disturbances, evictions, debts, mortgages, and

claims whatsoever, in the same manner as the former owners of the different slaves above named, and of the different tracts of which the Linwood plantation is composed and made up, bound themselves to *him*, the said Philip Minor and William Kenner, and his heirs, declaring that he sells his interest in the said plantation and slaves, in the same manner as he acquired it, with the whole extent the plantation has, from one boundary to the other, but without any warranty as to the number of superficial arpens therein contained; and he moreover subrogates the said Minor Kenner to all his rights and actions of warranty against those under whom he holds, and to all his other rights and titles in and to the aforesaid premises, from whatever cause the same may have been acquired. To have and to hold the said undivided fourth of the plantation and slaves unto the said Minor Kenner, who acknowledges possession of the same, to his proper use and behoof forever.

The double concession belonging to the plantation was purchased from the Government of the United States in the year eighteen hundred and twenty-four.

The undersigned parish judge of the parish of Ascension, certifies in his capacity of recorder of mortgages for said parish, that there are no other mortgages recorded in the register of mortgages for the parish, against or in the name of Philip Minor, on the above described plantation and one hundred and eighty-six slaves, but the following, viz:

1. A mortgage granted on one hundred and forty-eight of the one hundred and sixty-six first herein named slaves; some of those mortgaged have since died; and on all the different tracts of which the plantation is composed, except the two tracts bought from widow Barthelemé Hamilton and Lufroy Brasset, by Kenner and Minor, on the third of November, eighteen hundred and twenty-three, by an act passed before Hughes Lavergne, notary public, in New Orleans, on the said day, in favor of the New York Life and Fire Insurance Office, to secure the payment, by William Kenner and his heirs, of twenty-nine promissory notes, bearing interest at (6) six per cent. per annum, together amounting to the sum of eighty-nine thousand six hundred dollars.

2. A mortgage granted by Philip Minor, in the name of Kenner and Minor, in favor of the estate of Jean Baptist Laubelle, for the sum of six thousand seven hundred and five dollars, on the tract bought from said estate, according to the condition of the public sale of the property belonging to said estate, made on the thirty-first day of March, eighteen hundred and twenty-one, which mortgage has been reduced by different payments to the sum of fourteen hundred and thirty-five dollars, due since March, (1824) eighteen hundred and twenty-four.

3. A mortgage granted by the same Philip Minor, in the name of Kenner and Minor, in favor of widow Barthelemé Hamilton, for the sum of five thousand eight hundred and thirty-eight dollars, on the tract bought from her by act of the twenty-second day of March, eighteen hundred and twenty-four, which mortgage has been reduced by partial payment.

This done and executed in my office, at the parish of Ascension, State of Louisiana, this sixth day of January, eighteen hundred and thirty, in presence of Messrs. Adolphe Seghers and John Anderson, duly qualified witnesses, who have signed their names to these presents, together with the parties, and me, the parish judge aforesaid.

Signed, PHILIP MINOR,
MINOR KENNER,
JOHN ANDERSON,
AD. SEGHERS,
EDW. DUFFEL,
Judge and notary public.

A true copy (with the exception of the names and ages of the slaves, which have been omitted) from the original in my office, parish of Ascension, 10th July, 1848.

ALBERT DUFFEL,
Parish recorder.

Endorsement on the foregoing: Exhibit F to bill, filed July 14th, 1848.
J. M. DOWNS, *D. C.*

And afterwards, to wit, on the 2d day of January, A. D. 1849, John S. Minor, by his solicitor I. T. Preston, esq., filed in this cause the following demurrers, to wit:

In chancery sitting, No.

CIRCUIT COURT OF THE UNITED STATES.
In and for the 5th circuit, eastern district of Louisiana.

EDMUND P. GAINES and WIFE
vs.
BEVERLY CHEW, RICHARD RELF, et als.

The demurrer of John S. Minor, one of the defendants in this suit, residing in the parish of Ascension, in the bill and amended bill of complaint of Edmund P. Gaines and Myra, styling herself Myra Clark, his wife; this defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill and amended bill contained, as true in such manner and form as the same are therein and thereby set forth and alleged, does demur to said bill as amended, and for cause of demurrer, shew that the said complainants have not by their said bill, as now amended, made such a case as entitles them in a court of equity to any discovery from this defendant, or to any relief against him, as to the matters contained in their said bill as now amended, or any such matters; and that any discovery which this defendant (not admitting that he can make any discovery,) could make touching the matters complained of in the said bill, the whole as now amended cannot be of any avail for said complainants, for any of the purposes for which a discovery is sought against this defendant by said

bill in its present amended form, nor entitle said complainants to any relief in this court, touching any of the matters therein complained of; wherefore, and for divers other good causes of demurrer appearing on the bill as finally amended, this defendant does demur, and pray the judgment of this honorable court, whether he shall be compelled to make any further answer to said bill as mended; and he humbly prays to be hence dismissed, &c., &c.

And this defendant, by protestation, not confessing or acknowledging all or any of the matters or things set forth in the bill of the complainants as it now stands amended, in manner and form as they are therein set forth, for further cause of demurrer to said bill as amended does show, that it appears by the same in various parts, that the same is *in various parts that the same is* exhibited against this defendant, and many others therein named, for several distinct matters and causes; in many whereof, as appears by said bill as amended, this defendant is not in any manner interested or concerned; by reason of which distinct matters said complainants' said bill as amended is drawn out to a considerable length, and this defendant compelled to take a copy of the whole thereof; and by joining distinct matters together, which do not depend upon each other in the said bill as now amended, the pleadings, orders, and proceedings, will, in the progress of the said suit, be intricate and prolix, and this defendant put to unnecessary charges in taking copies of the same, altho' several parts in no way relate to or concern him, and in which he ought not to be implicated; and for other and further cause of demurrer, this defendant, by protestation, not confessing or acknowledging any of the matters or things therein contained in the said bill as amended, for other and further cause of demurrer, does show, that the scope and end of the bill of complainants, as it stands amended, is to recover certain real estate, together with rents, issues, and profits thereof, for which said bill seeks to make him liable, and to account to said complainants, and which said complainants, by their bill as amended, seek to have decreed to them, on the ground that the complainant, Myra Gaines, is the sole heir-at-law of Daniel Clark, deceased.

And this defendant to the said complainants' bill as amended shews, for cause of demurrer, that the said complainants, for any and for all of the matters and things in their bill as amended, made cause of complaint, have, by the laws of Louisiana, a full, complete, and adequate, and effectual remedy in the courts of law, and on the law side of this honorable court, according to the known, usual, and acknowledged common law of Louisiana, and under the codes and statutes passed and in full force as laws in said State of Louisiana; for which cause this suit in equity cannot be maintained.

And this defendant, for other and further cause of demurrer, by protestation, &c., not confessing or acknowledging any of the matters and things in said complainants' bill, and for other and further causes of demurrer, that there is nothing in the bill, or amended bill, by which it is shown that said M. Z. Gardette was ever married to Daniel Clark,

neither date nor place being mentioned; nor does the complainant shew the date or place of her birth; there is no shewing that the property attempted to be assigned by said Zuline Gardette to the oratrix Myra, was owned, possessed, or acquired by Daniel Clark during any supposed coverture with Zuline Gardette; nor do said complainants shew that the said property intended to be assigned by the said Zuline Gardette was community property, or such as she could assign, or in which she had accepted the community alleged but not admitted to have existed between her and Daniel Clark within the delays allowed by the laws of Louisiana, then in force, in order to give her any assignable or other interest.

And this defendant, for other and further cause of demurrer, does for other and further cause of demurrer, and for assignment of demurrer, by protestation, &c., not confessing or acknowledging any of the matters and things in said bill as amended, and for other and further cause of demurrer, and assignment of demurrer, shew that, according to the shewing of said complainants, the great lapse of time which hath intervened between the supposed transactions complained of by complainants, and the institution of the present cause of action, that the time allowed by law for the institution of suits had long before expired, and the cause of action of said complainants, if any they ever had, was prescribed by the laws of limitation of Louisiana.

Wherefore this defendant assigns said laws of limitation and prescription as cause of demurrer, and prays that said bill and amended bill may be dismissed with costs to this defendant, most wrongfully sustained, &c.

ISAAC T. PRESTON,
Solicitor for def't.

I do hereby certify, that, in my opinion, the foregoing demurrers are well founded in law. ISAAC T. PRESTON,
Solicitor.

STATE OF LOUISIANA,
City of New Orleans.

John S. Minor, one of the defendants in this suit, being duly sworn, deth depose and say, that he files the foregoing demurrers not for delay of the trial of this cause, but upon the advice of counsel, that they are well founded in law.

JOHN S. MINOR.

Sworn to and subscribed at New Orleans, this 1st day of January, 1849, before me.

D. N. HENNEN,
U. S. Com'r.

Filed 2d Jan'y, 1849.

WM. AUDRY,
D. Clerk.

Disclaimer of Duncan F. Kenner.

And afterwards, to wit, on the 2d January, 1849, Duncan F. Kenner, by his solicitor, filed in this cause his declaration as follows:

To the honorable fifth circuit court of the United States, in and for the district of Louisiana.

The answer of Duncan F. Kenner to the bill of complaint and supplemental bills, filed in this honorable court by Edmund P. Gaines and Myra Gaines, his wife, respectfully shows:

That your respondent disclaims title to any of the land sued for in complainants' bill.

Wherefore he prays to be dismissed with his costs; as in duty bound, &c.

ISAAC T. PRESTON,
Solicitor for him.

Endorsed—"Filed 2d January, 1849.

WM. AUDRY,
D. Clerk.

Answer of John S. Minor.

And afterwards, to wit, on the 2d January, 1849, John S. Minor filed in this cause his answer, as follows:

To the honorable circuit court of the United States, for the fifth circuit and district of Louisiana.

John S. Minor, a citizen of the State of Louisiana, appears in court in pursuance of the subpœna served upon him upon the complaint of Edmund P. Gaines and Myra Gaines, his wife, and adopts as his own the demurrers, pleas, and answer heretofore filed in this honorable [court] for him by his late father and tutor, Theophilus P. Minor, on the 3d day of November, 1845, and alleges that the facts stated and allegations made in said pleadings are true, and are full and complete defences to the original bill of complaint and supplemental bills filed against him by the complainants; but if the demurrers, pleas, and original answer be deemed insufficient, and not otherwise, your respondent answers to the original and supplemental bills of complaint of the complainants, that he owns an undivided fourth of the tract of land sued for by virtue of the will of his late grand-uncle Philip Minor, made on the 11th day of July, 1836, and duly probated by the probate court of the parish of Ascension, on the 17th day of September, 1836; and the undivided fortieth part of said tract of land by inheritance from his deceased sister Ellen F. Minor; and that his mother Myra F. Minor, and brothers Philip T. Minor, Harry Minor, William N. Minor, Francis E. Minor, and his sisters Julia N. Minor, Laura P. Minor, are owners of the remainder of said tract of land; that they all hold under the will of Philip Minor, which charges his succession with heavy incumbrances in favor of other

heirs and legatees, which will be set forth if it should become necessary to take an account of the same.

For further answer your respondent alleges that William Kenner and Philip Minor purchased the said tract of land from Beverly Chew and Richard Relf, the executors of Daniel Clark, duly qualified and sworn as stated in the original answer, and from them as the duly appointed attorneys in fact of Mary Clark, the only legal and instituted heir and legatee of Daniel Clark, as stated in the original answer, by a public act of sale made before John Lynd, a notary public of New Orleans, dated 2d of August, 1816, and paid for the same, then in a wild uncultivated state, the sum of eleven thousand five hundred dollars, which was the full value of said land.

And your respondent alleges that Mary Clark, the mother and legal and instituted heir of Daniel Clark, by giving said power of attorney, by joining in sales of the property of the succession, by receiving moneys belonging to the same during her life, and by disposing by will of said succession at her death, fully accepted and took possession of Daniel Clark's succession under the laws of Louisiana, unconditionally and as heir and universal legatee, gave to William Kenner and Philip Minor a perfect and formal title to said tract of land by the act of sale aforesaid.

Your respondent alleges that they purchased said land in good faith, and without any knowledge or notice of any right or claim to the same by any other person than the vendors, and thereby acquired an equitable title to said land, which cannot be divested in a court of equity.

Your respondent further alleges that Philip Minor and William Kenner, or his heirs, in good faith and without notice of any other title, increased the plantation by subsequent purchases to a front of forty-three arpens by eighty in depth, the whole of which by mesne conveyances finally vested in Philip Minor, Duncan F. Kenner, and George R. Kenner; and before any notice of the claim of the complainant, or any knowledge or notice of any outstanding claim, they divided the plantation in the year 1834 or 1835, and the part now sued for was allotted to Philip Minor, in consideration of which he transferred to Duncan F. Kenner and George R. Kenner his interest in the remainder of the plantation; by means whereof he obtained a legal and equitable title to the part now sued for, without any notice of a legal or equitable title in the complainant; and which legal and equitable title of Philip Minor having been transmitted to your respondent, cannot be divested in a court of equity.

Your respondent denies that said Daniel Clark ever left a will acknowledging complainant as his legitimate child, or that such acknowledgment, if made, could render the complainant legitimate; and he alleges that Daniel Clark left a last will, duly proved, indicating to the world that his mother was his only heir; that he was unmarried, and had no lawful issue. Further, your respondent alleges, that Daniel Clark, during his whole manhood, and to the day of his death, held

out, in his whole life and conversation to the world, especially to all truthful, virtuous, and honest people, that he was a batcheler, that he had never been married, and that he had no lawful issue to inherit his estate. And your respondent denies that it ever was known or believed, or pretended in this community, where he lived and died, that the complainant, or any other person, was his lawful issue. And your respondent denies that any person, and especially those under whom he holds his land, had any notice, knowledge, or belief, of any such unfounded pretence, which, he alleges, was got up for the purpose of delusion, for the first time, twenty-three years after Daniel Clark's death, and was not brought to the notice of those under whom your respondent claims title, until they had held and possessed the tract of land, for which he is sued, in good faith and by a just title, for upwards of thirty years, for which reason the claim of the complainant against your respondent is barred by the prescriptions of ten, twenty, and thirty years, which he expressly pleads against her demand as a complete bar to the same by the laws of Louisiana; and which prescriptions give a good and perfect title to him to his property, even if the complainant had any pretence to the property, which he denies.

Your respondent denies that he is bound by the proceedings, testimony, or decree, in the case of complainants against Charles Patterson, because neither he nor his father and tutor was a party to the suit when the testimony was taken, nor when the case was tried and decree rendered, and was forced to become a party while that case was pending in the Supreme Court of the United States.

He further alleges, that the decree against Patterson was expressly rendered without prejudice to other parties; that it was rendered by consent, because all proper parties were not before the court, and the cause was not at issue as to many parties interested, and has therefore no effect, except upon Patterson himself, and in no manner affects the rights of your respondent.

Your respondent further alleges, that the case of complainant against Patterson was carried on collusively for the purpose of having it prejudged as to other defendants. He alleges that the complainant and Charles Patterson had a perfect understanding; that she should not, in case of success, take his property, or he lose it, but that he was to retain the property, and the complainant pay all the costs to which he was condemned; and, in fact, Charles Patterson, without any consideration, has retained and possessed the lots sued for to this day, and the complainant has paid the costs decreed against him; for which reasons he is not bound by said decree; and as equity requires parties to come into court with clean hands, this attempt to carry on collusion by deluding the courts, is a bar to any relief in equity to the complainant, if she had ever been entitled to any, which your respondent denies.

Your respondent further alleges, that all suits to annul sales or other acts for error or fraud, were and are prescribed by the laws of Louisiana by the lapse of ten years, which prescription of ten years he expressly pleads against the claims of complainants as a complete bar to

heirs and legatees, which will be set forth if it should become necessary to take an account of the same.

For further answer your respondent alleges that William Kenner and Philip Minor purchased the said tract of land from Beverly Chew and Richard Relf, the executors of Daniel Clark, duly qualified and sworn as stated in the original answer, and from them as the duly appointed attorneys in fact of Mary Clark, the only legal and instituted heir and legatee of Daniel Clark, as stated in the original answer, by a public act of sale made before John Lynd, a notary public of New Orleans, dated 2d of August, 1816, and paid for the same, then in a wild uncultivated state, the sum of eleven thousand five hundred dollars, which was the full value of said land.

And your respondent alleges that Mary Clark, the mother and legal and instituted heir of Daniel Clark, by giving said power of attorney, by joining in sales of the property of the succession, by receiving moneys belonging to the same during her life, and by disposing by will of said succession at her death, fully accepted and took possession of Daniel Clark's succession under the laws of Louisiana, unconditionally and as heir and universal legatee, gave to William Kenner and Philip Minor a perfect and formal title to said tract of land by the act of sale aforesaid.

Your respondent alleges that they purchased said land in good faith, and without any knowledge or notice of any right or claim to the same by any other person than the vendors, and thereby acquired an equitable title to said land, which cannot be divested in a court of equity.

Your respondent further alleges that Philip Minor and William Kenner, or his heirs, in good faith and without notice of any other title, increased the plantation by subsequent purchases to a front of forty-three arpens by eighty in depth, the whole of which by mesne conveyances finally vested in Philip Minor, Duncan F. Kenner, and George R. Kenner; and before any notice of the claim of the complainant, or any knowledge or notice of any outstanding claim, they divided the plantation in the year 1834 or 1835, and the part now sued for was allotted to Philip Minor, in consideration of which he transferred to Duncan F. Kenner and George R. Kenner his interest in the remainder of the plantation; by means whereof he obtained a legal and equitable title to the part now sued for, without any notice of a legal or equitable title in the complainant; and which legal and equitable title of Philip Minor having been transmitted to your respondent, cannot be divested in a court of equity.

Your respondent denies that said Daniel Clark ever left a will acknowledging complainant as his legitimate child, or that such acknowledgment, if made, could render the complainant legitimate; and he alleges that Daniel Clark left a last will, duly proved, indicating to the world that his mother was his only heir; that he was unmarried, and had no lawful issue. Further, your respondent alleges, that Daniel Clark, during his whole manhood, and to the day of his death, held

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out, in his whole life and conversation to the world, especially to all truthful, virtuous, and honest people, that he was a batchelor, that he had never been married, and that he had no lawful issue to inherit his estate. And your respondent denies that it ever was known or believed, or pretended in this community, where he lived and died, that the complainant, or any other person, was his lawful issue. And your respondent denies that any person, and especially those under whom he holds his land, had any notice, knowledge, or belief, of any such unfounded pretence, which, he alleges, was got up for the purpose of delusion, for the first time, twenty-three years after Daniel Clark's death, and was not brought to the notice of those under whom your respondent claims title, until they had held and possessed the tract of land, for which he is sued, in good faith and by a just title, for upwards of thirty years, for which reason the claim of the complainant against your respondent is barred by the prescriptions of ten, twenty, and thirty years, which he expressly pleads against her demand as a complete bar to the same by the laws of Louisiana; and which prescriptions give a good and perfect title to him to his property, even if the complainant had any pretence to the property, which he denies.

Your respondent denies that he is bound by the proceedings, testimony, or decree, in the case of complainants against Charles Patterson, because neither he nor his father and tutor was a party to the suit when the testimony was taken, nor when the case was tried and decree rendered, and was forced to become a party while that case was pending in the Supreme Court of the United States.

He further alleges, that the decree against Patterson was expressly rendered without prejudice to other parties; that it was rendered by consent, because all proper parties were not before the court, and the cause was not at issue as to many parties interested, and has therefore no effect, except upon Patterson himself, and in no manner affects the rights of your respondent.

Your respondent further alleges, that the case of complainant against Patterson was carried on collusively for the purpose of having it prejudged as to other defendants. He alleges that the complainant and Charles Patterson had a perfect understanding; that she should not, in case of success, take his property, or he lose it, but that he was to retain the property, and the complainant pay all the costs to which he was condemned; and, in fact, Charles Patterson, without any consideration, has retained and possessed the lots sued for to this day, and the complainant has paid the costs decreed against him; for which reasons he is not bound by said decree; and as equity requires parties to come into court with clean hands, this attempt to carry on collusion by deluding the courts, is a bar to any relief in equity to the complainant, if she had ever been entitled to any, which your respondent denies.

Your respondent further alleges, that all suits to annul sales or other acts for error or fraud, were and are prescribed by the laws of Louisiana by the lapse of ten years, which prescription of ten years he expressly pleads against the claims of complainants as a complete bar to

their suit. Your respondent further alleges, that all informalities in public sales are cured by the lapse of five years, and suits on account of them are prescribed by said term, which prescription of five years he expressly pleads against the claims of the complainants. Your respondent alleges that he, and those under whom he claims title, possessed the land sued for in good faith and by a just title, and are not bound by the laws of Louisiana to account for the rents and profits of the land, which he pleads against the demand of complainants, for an account of the profits of the land.

He further alleges that the land sued for was purchased in an unimproved state from the representatives of Daniel Clark, and would not have produced any profits but for the improvements and cultivation of those under whom he claims, and would not now produce any thing annually, but for the labor of the slaves, and of those employed by him and his co-proprietors.

He further alleges that the only means he has of ascertaining the profits of the land separately from said labor and improvements, is by estimating what it could be rented for annually; and he denies that his undivided interest in said land could be rented for any sum.

He further believes that the whole tract could not be rented for an annual rent of more than two thousand dollars with the improvements, and for not more than five per cent. of the original cost of $11,500, without the improvements, to wit, five hundred and seventy-five dollars for each year.

Your respondent prays that an issue of fact may be made up and tried at law, before a jury duly empannelled, on the allegation of complainants, that Daniel Clark was married to Zuline Carriere, and the denial thereof by your respondent; and on the allegation of complainant, that she is the lawful issue of such marriage, and the denial thereof by your respondent; and that farther proceedings in this case may take place according to the verdict that shall be rendered on those issues.

And your respondent prays on the demurrers and pleas heretofore filed by and for him, which he does not waive, but insists upon the same, and if they should be overruled, upon consideration of the answers heretofore and now filed for and by him, that the complainants' bill of complaint may be dismissed, and that he may have a decree in his favor for his costs.

And that this honorable court would afford him all further and other relief which justice, equity, and the nature of his case may require; as in duty bound.

STATE OF LOUISIANA,
City of New Orleans.

John S. Minor, one of the defendants in the suit of Edmund P. Gaines and Wife, against him and others, being duly sworn, doth depose and say, that the statements in the foregoing answer are true to the best of his knowledge and belief; and contain also an answer, as far as

his [he is] able to make answer thereto, to the interrogatories propounded to him by complainants in their bill of complaint.

JOHN S. MINOR.

Sworn to and subscribed before me, the undersigned, this 1st day of January, 1849.

DUNCAN N. HENNEN,
U. S. Commissioner.

Endorsed: Filed 2d January, 1849.

WM. AUDRY, *Deputy clerk.*

Amended and supplemental bill.

In chancery.

To the judges of the United States circuit court, of the fifth circuit, within and for the district of Louisiana.

Edmund P. Gaines and Myra Clark, his wife, who are citizens of the State of Tennessee, by leave of the court first had and obtained, bring this their amended and supplemental bill of complaint against Richard Relf, Beverly Chew, Daniel C. Holliday, and William R. Taylor and Mariah Davis, his wife, and Eliza Davis, wife of Minor Kenner, and her husband Minor Kenner, children and heirs of Mariah Holliday, deceased; the said Minor Kenner in person, and also as administrator of said Mariah Holliday, deceased; all of the State of Louisiana, and are citizens thereof.

And thereupon your orator and oratrix complain and say, that heretofore, to wit, on the twenty-eighth day of July, one thousand eight hundred and thirty-six, your oratrix, then the wife of William Wallace Whitney, now deceased, with her said husband, filed her bill of complaint in this honorable court, wherein your oratrix, with her then said husband, were complainants, and the above named Richard Relf, Beverly Chew, Mariah Holliday, since deceased, and John Holliday, with others, were defendants.

That in said bill of complaint it was stated and set forth, amongst other matters, that Daniel Clark, late of the city of New Orleans, in the State of Louisiana, and the father of your oratrix, the said Myra, was at the time of making his last will hereinafter mentioned, and at his death, seized in fee simple, or otherwise well entitled to, and lawfully possessed of, in the said eastern district of Louisiana, divers freehold messuages, plantations, lands, tenements, hereditaments, premises, and slaves, hereinafter enumerated, and situate, bounded, and described as follows, that is to say:

One valuable plantation, parcel or tract of land, situated in the parish of Jefferson, in the 1st district, in the State of Louisiana, about five leagues above the city of New Orleans, on the left bank of Mississippi river, and bounded on the upper side by lands owned or possessed in the month of October, 1813, by one William Kenner; and on the lower

side by lands which were owned or possessed in said October, 1813, by Jacques Fortier; and extending in front on the said river Mississippi, twenty-four and one-half arpens, and extending in depth on both sides, to lake Pontchartrain; with all the buildings, tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining; being the same plantation, piece, or parcel of land, which was purchased by the said Daniel Clark in his lifetime of one Stephen Henderson for the sum of one hundred and twenty thousand dollars.

Also the following slaves, viz: Adam, Hector, Lubin, William, Quasher, Kitty, Kate, Judah, Sylvia, James, Stephen, Doctor Davy, Antoine, Figaro, Stewart, Rosette, Dave, Lem, Eliza, Jack, Maurice, Rose, Luider, Providence, Jean, Julia, Andres, Moses, Hannah, Lem, Kitty, and two children not named, McDaniel, Lawrence, Frankey, and her four children, viz., Jean, Charles, McKinsey, and Mary, employed in the cultivation of said plantation.

And that the said Daniel Clark, at the time of making his last will hereinafter mentioned, and at his death, was entitled (amongst other property) to certain property, debts, and demands, which are enumerated in a schedule of debts and property made and filed by Richard Relf and Beverly Chew, in the probate court, for the parish and city of New Orleans, on the 3d day of March, 1814, the whole amount of the said schedule of debts and property being, as nearly as your oratrix had been able to calculate the same, three hundred and twenty-three thousand one hundred and eighty-eight dollars and four cents, independently and exclusively of certain real estate belonging to the said Daniel Clark, specified and set down in said schedule, at the value of three hundred and forty-four thousand dollars; and it is expressly charged that all or nearly all of the said amount of three hundred and twenty-three thousand one hundred and twenty-eight dollars and four cents, was belonging to, and the property of, the said Daniel Clark at the time of his, the said Daniel Clark's, death. And it is expressly charged, that previous to the death of the said Daniel Clark, it had long been the intention and earnest desire of the said Daniel Clark, the father of your oratrix, to leave at his decease all his property and estate, real and personal, to your oratrix, the said Myra Clark; that in order more effectually to secure the fulfilment of said intention and desire, the said Daniel Clark did, on or about the month of July, in the year 1813, duly make and execute his last will and testament, according to law, having wholly written and signed the same with his own hand; and did in and by the said will declare your oratrix, the said Myra Clark, to be his legitimate child; and the said Daniel Clark did also, in and by his said last will, devise and bequeath to your oratrix, the said Myra Clark, all his, the said Daniel Clark's, property and estate, real and personal, and did name therein as executors of the said will, Colonel Joseph Deville Degoutin Bellechasse, James Pitot, and Chevalier Dussuan de la Croix, appointing the said Chevalier de la Croix tutor also of your oratrix, the said Myra Clark, your oratrix being then an infant under the age of twenty-one years, to wit, of the age of seven years.

And that the said will did also contain some bequests to friends, amongst which bequests were a legacy or annuity of two thousand dollars per annum to be paid to Mary Clark, the mother of the said Daniel Clark, during the lifetime of the said Mary Clark; an annuity of five hundred dollars to be paid yearly to one Caroline de Grange, until the said Caroline should have attained her majority, when the annuity should cease, and the sum of five thousand dollars should be paid to her; and also a bequest of five thousand dollars to be paid to the son of the said Judge James Pitot; and the said will further contained specific and detailed instructions respecting the education of your oratrix, the said Myra, and the management of the estate and property of the said Daniel Clark during the infancy of your oratrix. And it is expressly charged that the said will was wholly written and signed with the proper hand of the said Daniel Clark; that the said will was shown by the said Daniel Clark to, and its contents read by, the said Judge James Pitot, the late John Lynd, notary public, in and for the parish and city of New Orleans, Mrs. Harriet Smith, and others; and that the said will was also shown and its contents communicated by the said Daniel Clark to the said Col. Bellechasse, Chevalier de la Croix, Mr. Pierre Baron Boisfontaine, and others; and that the said Daniel Clark departed this life on or about the 16th day of August, in the year of 1813, without altering or revoking his said will, and leaving your oratrix, the said Myra Clark, his only child or descendant, and the forced or instituted heiress of all his property and estate, real and personal. And it is expressly charged that the said Daniel Clark left at his decease no child or descendant him surviving, except your oratrix, the said Myra Clark, and that your oratrix, the said Myra Clark, was the lawful and legitimate and only child or descendant of the said Daniel Clark, and entitled as such by the law of the land to the possession and inheritance of all the property and estate of the said Daniel Clark, and especially to the property and estate, real and personal, hereinbefore enumerated and described.

And it is especially charged, that your oratrix, the said Mary Clark, soon after her birth, which took place in the month of July, 1806, was placed by her father, the said Daniel Clark, in the family of Samuel B. Davis, with whom she continued to live at New Orleans until the year 1812, when the said Samuel B. Davis removed to live at the city of Philadelphia, in the State of Pennsylvania; that your oratrix, the said Myra, accompanied the family of the said Samuel B. Davis to Philadelphia, and remained in his, the said Samuel B. Davis's, family until the time of the death of the said Daniel Clark and afterwards. And that during the lifetime of the said Daniel Clark, he, the said Daniel Clark, continued to exercise the authority, care, and protection of a parent in regard to your oratrix, the said Myra Clark.

And that in or about the month of May, in the year 1811, the said Daniel Clark was led to believe that one Daniel W. Coxe, of Philadelphia, with whom he had previously had some connexion in business, had, by imprudence or misconduct, involved him, the said Daniel

Clark, in serious pecuniary and commercial difficulties and embarrassments; that, immediately thereupon, the said Daniel Clark deemed it advisable to proceed forthwith to Philadelphia, in order to attend personally to the settlement of the difficulties which it was represented to him existed; that, preparatory to his undertaking the voyage from New Orleans to Philadelphia for the purposes aforesaid, and in or about the month of May, 1811, he, the said Daniel Clark, conveyed property to Samuel B. Davis and others to the amount of several hundred thousand dollars, to be held in trust by them for your oratrix, and then, at or about the said time, *then*, made a will, devising briefly and in general terms his property to his mother, Mary Clark, then residing out of the State of Louisiana, and also appointing Richard Relf and Beverly Chew, two of the defendants herein, the executors thereof; and that the said Daniel Clark, in or about the said month of May, 1811, proceeded to Philadelphia, and returned again in a few months thereafter, and in the same year, to New Orleans; that the said Daniel Clark had ascertained at Philadelphia, upon his having proceeded thither as aforesaid, that his interests had not been so seriously jeopardized by the said Daniel W. Coxe as he had been led to believe, as above stated, previous to his having gone there; that he did, therefore, upon his said return to New Orleans, receive back some portions of the property which he had conveyed as aforesaid in trust for your oratrix, the said Myra, which, under the above mentioned erroneous belief respecting the supposed difficulties in which the said Cox was alleged to have involved him; and that, upon his said return to New Orleans, and upon having ascertained as aforesaid the groundlessness of the apprehension which had been excited in his mind relative to the consequences that might result to himself from the transactions of the said Daniel W. Coxe, he, the said Daniel Clark, did also declare that he no longer intended that the said will, made in 1811, should be his last will; that he had made it while laboring under false impressions, and only provisionally; and that he should revoke the said will of 1811, and make and execute another will, devising and bequeathing all his estate, real and personal, to your oratrix, the said Myra Clark; and it is especially charged that the said Daniel Clark did revoke the said will made in 1811 as aforesaid, and did, after the making and execution of said will of 1811, duly make and execute in the year 1813, and but a short time before his death, as your oratrix had thereinbefore set forth, his, the said Daniel Clark's, last will and testament, devising and bequeathing thereby to your oratrix, the said Myra Clark, all of the real and personal estate of him, the said Daniel Clark, and declaring your oratrix, the said Myra, to be the legitimate child of him, the said Daniel Clark, as your oratrix had therein before more particularly stated; and that the said Daniel Clark did, upon his death-bed, and unto the very moment of his decease, continue to declare that the aforesaid will, made by him in the year 1813, devising all his property as aforesaid to your oratrix, the said Myra, was his last will and testament, and was then contained in a black case in his office-room in the house in which he was at the time, and in which

he died, almost at the moment of making the said declaration in favor of your oratrix, the said Myra.

And the said Daniel Clark, upon making the said will of 1811, delivered it to the said Richard Relf and Beverly Chew, or one of them, and allowed it to remain in their keeping from thenceforth; that the said Daniel Clark was very extensively engaged in mercantile and other business and speculations, and possessed a vast amount of property; and that the said Richard Relf acted as his agent in relation to many of the transactions and affairs in which he, the said Daniel Clark, was engaged; that, at and immediately before the time of the death of the said Daniel Clark, the said Richard Relf assumed to direct the domestic arrangements of the said Daniel Clark, and attended during the last illness of the said Daniel Clark at his, the said Daniel Clark's, dwelling-house, and took upon himself the sole control of the household and the affairs of the said Daniel Clark; and that, instantly upon the death of the said Daniel Clark, all the books, papers, letters, documents, and all deeds and writings of what nature soever, belonging to the said Daniel Clark, came into the sole possession of him, the said Richard Relf; and it is expressly charged that the said will of 1813, made by the said Daniel Clark in favor of the said Myra, came into the possession of the said Richard Relf immediately upon the death of the said Daniel Clark; and that the said Richard Relf fraudulently concealed, suppressed, or destroyed the same, or caused it to be concealed, suppressed, or destroyed, and did substitute in its place or stead the said old revoked will of 1811, in which he, the said Richard Relf, was named an executor; and that the said last will of 1813 was never seen by any one after the death of the said Daniel Clark, except by the said Richard Relf and Beverly Chew, and their confederates.

And it is expressly charged that the said Richard Relf did fraudulently cause the said old revoked will, made in 1811, to be admitted to probate in the probate court for the parish and city of New Orleans, and procured himself, the said Richard Relf, to be sworn and authorized by the said probate court as the testamentary executor of the said Daniel Clark.

And that the said Beverly Chew did also, soon after the death of the said Daniel Clark, to wit, in the month of January, 1814, procure himself to be sworn and authorized by the said court of probates, for the parish and city of New Orleans, to act as testamentary executor of the said Daniel Clark under the said revoked will of 1811. And that when the said Richard Relf and Beverly Chew took upon themselves the office of testamentary executors of the said Daniel Clark as aforesaid, there was no relative or any person claiming to be heir of the said Daniel Clark, in the State of Louisiana; that your oratrix was then an infant under the age of seven years, and resided at that time in the city of Philadelphia, in the State of Pennsylvania, with the family of the said Samuel B. Davis; and that Mary Clark, the mother of the said Daniel Clark, who was named as aforesaid devisee of the said Daniel Clark in the said old revoked will of 1811, was also then a resident of the State

of Pennsylvania, and continued to reside there until her death, which happened some years after the death of the said Daniel Clark. That the said Daniel Clark was a native of Ireland, from which country he emigrated to Louisiana, as your oratrix had been informed and verily believed, in or about the year 17 ; and that all his immediate relatives and family resided, at the time of his death, either in Ireland or in the State of Pennsylvania; and that none of them ever visited Louisiana until many years after his death; that the said Richard Relf and Beverly Chew fraudulently possessed themselves, immediately after the death of the said Daniel Clark, of the personal estate, effects, and credits of the said Daniel Clark to a great amount; and also entered into possession of the real estates of the said Daniel Clark, and into the receipt of the rents and profits thereof, by falsely and fraudulently representing the said estate to be insolvent; and by other fraudulent means continued, and were enabled to continue, and had ever since continued, and then were, in such possession, or in possession of a large portion thereof. And further, that, from and after the time of the death of the said Daniel Clark, and until about the year 1832, when your oratrix, the said Myra Clark, became the wife of the said William Wallace Whitney, your oratrix, the said Myra, continued to reside in the family of the said Samuel B. Davis, who lived during all, or nearly all, that time in the State of Pennsylvania. And it is expressly charged, that, during the lifetime of the said Daniel Clark, the father of your oratrix, the said Myra, your oratrix was always known and called by her true and rightful name of Myra Clark, and by no other name; and that, from and after the death of the said Daniel Clark, until at or about the time of the marriage of your oratrix, the said Myra, with the said William Wallace Whitney, your oratrix, the said Myra, was designated and called, in the family of the said Samuel B. Davis, by the name of Myra Davis, and by no other name, and was kept in ignorance of her real name, parentage, and true history, and of her rights and her title to the inheritance and possession of the estate of the said Daniel Clark; and was consequently unable, during all that time, to take the necessary measures for asserting her title to the said inheritance of her father, the said Daniel Clark. That, at or about the time of the marriage of your oratrix, the said Myra, with the said William Wallace Whitney, your oratrix was brought by accident to the discovery of her true name and parentage, and was subsequently made more fully acquainted with the circumstances of her *her* history and rights by the said Samuel B. Davis and others; and that your oratrix had, ever since the time of the said marriage of your oratrix with the said William Wallace Whitney, been, and was then, actively engaged in endeavors to establish the legal rights and claims of your oratrix, the said Myra, to the property and estate, real and personal, of the said Daniel Clark.

And it is expressly charged, that your oratrix, the said Myra Clark, was the only surviving child or descendant of the said Daniel Clark at the time of his death; and that your oratrix, the said Myra Clark, was,

upon the death of the said Daniel Clark, entitled, as his forced heiress-at-law, to four-fifth parts thereof; and, as his universal heiress, by him instituted and appointed in his said last will made by him, in 1813, to all and singular the estate, real and personal, of the said Daniel Clark.

And that the said Mary Clark, the mother of the said Daniel Clark, and the sole devisee in the said will of 1811, departed this life, at Germantown aforesaid, on or about the 9th day of June, 1823, leaving a last will and testament in which her two daughters, Eleanor O'Bearn, of Sligo, Ireland, and Jane Green, wife of George Green, of Liverpool, England, her grand-daughter, Sarah J. Campbell, of Germantown aforesaid, and Caroline born Desgrange, wife of Dr. John Barnes, were named as her devisees, each one-fourth of all and singular her estate, real and personal; and that each and every of said persons reside without the jurisdiction of this honorable court, and cannot be made parties to this suit.

And it is further expressly charged, that the said Relf and Chew, having as aforesaid unlawfully taken possession of, and disposed of, in the manner herein set forth, all and singular the real estate and slaves of the said Daniel Clark in this bill set forth, they, the said Relf and Chew, and each of them, became liable to your oratrix as trustees, forced or implied, of all and singular said real estate and slaves, for the sole use, benefit, and behoof of your oratrix, either for the whole amount thereof, as devisee of said Daniel Clark in his said will of 1813, or for the four-fifths thereof as his forced heir-at-law, as this honorable court may adjudge and decree her rights and equities to be. And that the said defendants who have claimed, or who now claim, to be owner or owners of said property, whose rights as pretended were derived originally through said Relf and Chew, or either of them, are, and each of them is, trustees or trustee as aforesaid of said property, and all and singular the revenues, issues, and profits thereof, to the sole use and benefit of your oratrix, as aforesaid.

And it is further expressly charged, that said property herein described, at the time of the death of the said Daniel Clark, was producing large annual revenues and profits, and that since that time said property has continued to produce, and does now produce, a large annual revenue; all of which has been, and still is, received by the said defendants, or some or one of them.

And that they, the said Eleanor O'Bearne, Jane Green and her husband, George Green, Sarah J. Campbell, and Caroline, born Desgranges, wife of Doctor John Barnes, Richard Relf, Beverley Chew, Mariah Holliday, and John Holliday, had been required respectively to surrender and deliver up to your oratrix, the said Myra Clark, the possession of such portion of the real estate and slaves owned by the said Daniel Clark at the time of his decease, as was by them, or each of them, respectively held, occupied, possessed, or claimed as owner or otherwise, together with all the title-deeds, vouchers, and documents relating to the same, or any part thereof; and severally to come to a just and true account with your oratrix for the rents, profits, issues, and

services thereof respectively, which had been received or enjoyed by them, or either of them, at any time since the death of the said Daniel Clark; with which just and reasonable requests your oratrix had well hoped the said defendants would have respectively complied, as in justice and equity they ought to have done.

And that the said Eleanor O'Bearne, George Green and Jane Green, his wife, Sarah J. Campbell, Caroline, wife of Dr. John Barnes, Richard Relf, Beverley Chew, Maria Holliday, and John Holliday, and their confederates, sometimes gave out and pretended that the said Daniel Clark never did make and execute the said will of 1813 in favor of your oratrix, as has been above stated; and that the said old will of 1811 was duly made and executed by the said Daniel Clark, and was left by him at the time of his decease unrevoked, and as his true and only last will and testament; whereas it is expressly charged the contrary of said pretence was true, and that the said Daniel Clark did make and execute the said will, made by him as hereinbefore stated in the year 1813, in favor of your oratrix, and did therein devise and bequeath all his estate, real and personal, to your oratrix, the said Myra Clark; and did also therein and thereby declare your oratrix, the said Myra Clark, to be the legitimate daughter of the said Daniel Clark, and did make and order therein the other dispositions and bequests hereinbefore stated by your oratrix to have been made and ordered by him in the said will made and executed as aforesaid in 1813, by him, the said Daniel Clark; and that the said will of 1813 operated as a full and perfect revocation of the former will, alleged to have been made by the said Daniel Clark in 1811, and of every other part and provision thereof; and that the said will of 1811 ought to be set aside, and the said will of 1813 established and confirmed, and the real and personal estate of the said Daniel Clark declared to be descended to your oratrix, the said Myra Clark, as the heir-at-law and devisee of the said Daniel Clark.

And at other times the said confederates would allege that some doubts had arisen concerning the legitimacy of your oratrix, the said Myra Clark, and pretend that the said Daniel Clark was never married to Zuline née Carriere, by whom he had your oratrix, the said Myra Clark, and the said Zuline née Carriere was the lawful wife of one Jerome Des Granges, who was still living when she became the mother of your oratrix by the said Daniel Clark; and therefore, upon the death of the said Daniel Clark, the equitable and legal interest in all the said real and personal estate and slaves descended to and became vested in the said Mary Clark, as his forced heir at law. Whereas it is expressly charged the contrary of all such pretences and allegations was true, and that your oratrix, the said Myra Clark, was the legitimate child of the said Daniel Clark, and that the said Daniel Clark was married to, and was the lawful husband of, the said Zuline née Carriere, at and before the time when she became the mother of your oratrix, the said Myra, by the said Daniel Clark; and that the said Zuline née Carriere was not, and never had been at any time, the lawful wife of the said Jerome Des Granges, or of any other man than the said Daniel Clark,

when she became the mother of your oratrix, the said Myra, as aforesaid; and that if any marriage ever did take place between the said Zuline and the said De Granges, the same was utterly null and void from the beginning, on the ground that the said Jerome Des Granges, at the time of his contracting such marriage, (if he did contract the same,) with the said Zuline, was the lawful wedded husband of another woman, to whom he had been previously married, and who was still living; all of which the said confederates would at other times admit; but then they pretended, that the said Richard Relf and Beverly Chew made sales of the said real and personal estate and the said slaves of the said Daniel Clark as testamentary executors of a will of the said Daniel Clark, which had been admitted to probate in the probate court, for the parish and city of New Orleans, and as the attorneys in fact of the said Mary Clark, the devisee in said will of 1811 named; and that the purchasers of the said real and personal estate of the said Clark, at the said sales thereof, did become such purchasers for full and valuable considerations, and without notice of any revocation and invalidity of the said probated will alleged to have been made by the said Daniel Clark in 1811, and in which the said Richard Relf and Beverly Chew were named executors, and without notice of the rights or claims of any other person than the said Mary Clark to the said estate of the said Daniel Clark, or any part thereof; and therefore they insisted, that although the said will of 1811 might not have been the last will of the said Daniel Clark, and although your oratrix, the said Myra, might have been the true and lawful heiress of the said Daniel Clark, yet they should not be affected thereby, and that the title acquired by the said purchasers under the said sales made of the said real and personal estate and slaves of the said Daniel Clark, by the said Richard Relf and Beverly Chew, were good and perfect titles, and could not be invalidated or disturbed in any manner by the revocation or invalidity of the said will of 1811, or of any claim or claims, or title, which your oratrix, the said Myra, might have had, or then had, to the said estate and slaves, or any portion thereof; whereas it is expressly charged the contrary of all such pretensions was true, and that the said Richard Relf and Beverly Chew did not, nor did either of them, act in their said assumed capacities of pretended executors of a will of the said Daniel Clark, and attorneys of the said Mary Clark, legally; nor did they nor either of them, when acting in both or either of such assumed capacities, observe or comply with the formalities, or adopt the measures prescribed by law as requisite to give any validity or authority to any act or acts done, or assumed to be done, by them, in such assumed capacities of executors or attorneys, in relation to the said real and personal estate and slaves of the said Daniel Clark; that a true and faithful inventory and a just appraisement by two duly appointed and sworn appraisers of the said real and personal estate of the said Daniel Clark had not been made, or caused to be made, according to law, by the said Richard Relf and Beverly Chew, or either of them, before the said sales were made; that proper and legal orders to sell

were not obtained by the said Richard Relf and Beverly Chew, or either of them, from the judge authorized to grant or make such orders before the said sales were made; that all, or nearly all, the said sales were made by private contract, and not at public auction, as they should, according to law, have been made; and that the moneys severally paid by the said purchasers for the portions sold to them respectively, of the said personal and real estate and slaves, by the said Richard Relf and Beverly Chew, or either of them, were not respectively full and valuable considerations for said portions of said real and personal estate and slaves; that many of said sales were made by the said Richard Relf and Beverly Chew, as pretended testamentary executors, after the year of testamentary execution had expired, and when they had not, nor had either of them, been continued by the order of any judge or court of competent authority, in their said functions of executors; that the said Richard Relf and Beverly Chew had not, nor had either of them, caused themselves, or either of them, to be duly recognised by a court of competent authority, as the attorney or attorneys of the said Mary Clark; and that all acts of the said Richard Relf and Beverly Chew, in relation to the estate of the said Daniel Clark, were, upon the face of the proceedings in the foregoing and many other respects, illegal, and informal, and fraudulent, and void, by the laws of the land, and so they were necessarily known to be by the said purchasers at the said sales; and that the making, execution, and existence of the said last will of the said Daniel Clark, made in 1813, and its fraudulent concealment, suppression, and destruction at his death, by the said Richard Relf, were notoriously known and reported at the time in Louisiana; and that the said purchasers, on the occasion of the making of the sales aforesaid, and afterwards, and their heirs and assigns, had some knowledge, notice, information, belief, or suspicion, or reason for belief or suspicion, and did, on their consciences, believe or suspect, that the said Richard Relf and Beverly Chew had acted fraudulently, improperly, and against equity and good conscience, in procuring to be admitted to probate the said will, alleged to have been made by the said Daniel Clark in 1811, and in having procured the appointment of themselves, the said Richard Relf and Beverly Chew, by the probate court, as executors of the said will of 1811, and representing the said real and personal estate of the said Daniel Clark to have been devised to, and inherited by, the said Mary Clark; all which the said confederates would at other times admit; and then they would pretend that they had delivered or sent to your oratrix full, true, and just accounts of the said real and personal estate and slaves of the said Daniel Clark, and all of the rents, profits, and issues and services thereof, and of all the business or concerns appertaining or relating thereto; whereas it is expressly charged the contrary of such pretence was true, and that the said confederates had not, nor had either of them, delivered or sent to your oratrix any account whatever; all of which actings, and doings, and pretences tended to the manifest wrong

and injury of your oratrix, and were contrary to equity and good conscience.

And that the said Eleanor O'Bearne, George Green and Jane Green, his wife, Sarah J. Campbell, Caroline, wife of Dr. John Barnes, Richard Relf, Beverly Chew, Maria Holliday, and John Holliday, and the rest of the confederates, might, without oath, full, true, direct, and *and* perfect answer make, your oratrix thereby expressly waiving the necessity of making such answer upon the oath of the said confederates, or of either of them, to all and singular the matters and things therein before stated and charged, as fully and particularly as if the same were thereinafter repeated, and they, and each of them, thereunto distinctly and specifically interrogated; and that not only as to the best of their, and each of their, respective knowledge and remembrance, but also as to the best of their respective information, hearsay, and belief; and that the said confederates might also severally set forth what right, title, or interest they respectively had or claimed in or to the real estate and slaves of the said Daniel Clark, or any and what part thereof; and how, and in what manner, they derived and made out the same, and by and under what deed or deeds, writing or writings; and might set forth the date and contents of all such deeds and writings.

And that the said Eleanor O'Bearne, George Green and Jane Green, his wife, Sarah J. Campbell, Caroline, wife of Dr. John Barnes, Richard Relf, Beverly Chew, Mariah Holliday, and John Holliday, and the rest of the confederates, might answer the premises; and that the said will, made by the said Daniel Clark in the year 1813, in which he devised all his estate as aforesaid to your oratrix, the said Myra, and the provisions and dispositions thereof, be carried into execution by and under the decree of this honorable court, or full force and effect given to the same as far as it was competent for this honorable court so to do, and the rights and interests of your oratrix under the same be declared and secured; and that it might be declared that the said will, alleged to have been made by the said Daniel Clark in 1811, had been utterly revoked and declared to be good for nought by him, the said Daniel Clark, in his lifetime; and that the said will so alleged to have been made by the said Daniel Clark in 1811 was, in fact and in truth, utterly void *utterly void* and of no effect; and that the said will, made as aforesaid by the said Daniel Clark in 1813, was duly made and executed by him, the said Daniel Clark, with all the formalities and other requisites necessary for passing real and personal estate by devise, and that it was the only true and valid will of the said Daniel Clark, and contained a good and valid devise and bequest of all the real and personal estate and slaves of the said Daniel Clark to your oratrix, the said Myra Clark; and that in and by the same he, the said Daniel Clark, did acknowledge and declare your oratrix, the said Myra Clark, to be the legitimate daughter of him, the said Daniel Clark; and that the said Daniel Clark departed this life on or about the 16th day of August, 1813, without altering or revoking his said will so

made by him as aforesaid in the year 1813, and containing the said devise to, and the said declaration of acknowledgment of the legitimacy of, your oratrix, the said Myra Clark; and that the said declaration or acknowledgment of the legitimacy of your oratrix, the said Myra, made as aforesaid by the said Daniel Clark, in his said last will made by him in the year 1813, was a full and perfect and effectual act of legitimation of your oratrix, the said Myra Clark, if any such act would have been necessary to establish the legitimacy of your oratrix, the said Myra; and that it vested in your oratrix all the rights, capacities, and privileges of a legitimate child; and also that it might be declared that your oratrix, the said Myra, was the legitimate child of the said Daniel Clark, and that the said Daniel Clark was the lawful husband of the said Zuline née Carriere, the mother of your oratrix, the said Myra, at and before the time when she, the said Zuline, became the mother of your oratrix, the said Myra, by the said Daniel Clark; and that it might be declared that all and every of the said sales of the said real and personal estate and the said slaves of the said Daniel Clark, made by the said Richard Relf and Beverly Chew, or either of them, as the executor or executors of the said revoked will of 1811, or as the attorney or attorneys of the said Mary Clark, or in any other capacity, were null and void and of no effect; and that the said real and personal estate and slaves of the said Daniel Clark descended to your oratrix, the said Myra, upon the death of the said Daniel Clark, as his, the said Daniel Clark's, devisee and heir-at-law; and that the said Eleanor O'Bearne, George Green, and Jane Green, his wife, Sarah J. Campbell, Caroline, wife of Dr. John Barnes, Richard Relf, Beverly Chew, Maria Holliday, and John Holliday, and the other defendants, might be decreed to deliver up to your oratrix the possession of all the said real estate and slaves therein before enumerated and described, and then held and possessed, or claimed to be held and possessed, by them, or either of them, jointly or severally, or in any other manner, as owners or otherwise, and to come severally to an account with your oratrix for the rents, profits, issues, and services of the said real estate and slaves of the said Daniel Clark, which had been possessed or received by the said defendants, or any of them, or by any other person or persons by their or either of their order, or for their or either of their use, since the death of the said Daniel Clark; and respectively to pay over to your oratrix whatever should be found due from them, or any of them, upon the taking of such account; and that in the taking of such account the said defendants might respectively be charged with interest for such balances as should appear to have been in their hands from time to time; and that the said defendants might be respectively decreed to deliver up to your oratrix all deeds and other writings in their hands relating to the said real estate and slaves of the said Daniel Clark; and that your oratrix might have such further or other relief in the premises as the nature of the case might require, and as might seem meet to this honorable court, and agreeable to equity and good conscience.

And your orator and oratrix further show unto your honors, that on the 12th day of December, 1837, in this honorable court, the death of the said William Wallace Whitney, the said former husband of your oratrix, having been suggested to the court, it was ordered that this suit be continued in the name of your oratrix. And that on the 24th day of May, 1839, it was shown to this honorable court, by way of supplement to said bill, that your orator and oratrix had become united by the bonds of matrimony, it was ordered that this suit stand and be proceeded in in the names of your orator and oratrix. And your orator and oratrix further show, that the said defendants, Richard Relf, Beverly Chew, and several other defendants in said original bill, being duly served with process, appeared to the said bill of your orator and oratrix, and filed demurrers thereto, which said demurrers were argued on appeal in the Supreme Court of the United States, and were overruled in said court, and defendants were required to answer to said bill of complaint.

And that said court directed the said bill of complaint to be amended in two points, which were made by said demurrers, that is to say, that the said Relf and Chew should not be called upon to account in and by said bill; and that in the aspect in which your oratrix was presented to said court in said bill, as the universal instituted heir of said Daniel Clark, under the will of 1813, as aforesaid, she could not make the said Caroline Barnes and her husband parties to said bill as defendants, she, the said Caroline, being a legatee in said will of 1813. That afterwards, the said Relf, Chew, Caroline Barnes, and others, filed answers to said bill. And your orator and oratrix further show unto your honors, that, to the answers of the said Relf and Chew, and the others of the defendants who have answered, replications have been filed, and that said bill was taken as confessed against the said defendants, Maria Holliday and John Holliday.

And your orator and oratrix further show unto your honors, by way of amendment to said bill, that they will renounce, for all the purposes of this suit against the defendants herein named, all claim which your oratrix has heretofore made to the estate of said Daniel Clark, as his instituted and universal heir and devisee by the said will of 1813; and that she will, as against the defendants herein named, and for the purposes of this suit as to the relief herein sought, assert and maintain her right, title, and equity to the four-fifth parts of the property and rights embraced in this amended bill and supplement, as the forced heir of said Daniel Clark, deceased, within and according to the tenor and effect, meaning and intent, of the law of the State of Louisiana, in such case made and provided, in force at the time of the death of said Daniel Clark. But your orator and oratrix expressly charge, that they shall at all times insist upon the fact, that said will of 1813, as stated in said original bill, was made by said Daniel Clark, and was suppressed or destroyed as also therein stated; so far as any thing was in said will contained declaring the legitimacy of your oratrix as the only child of the said Daniel Clark, born in lawful wedlock

with said Zuline née Carriere, and no further or otherwise; saving, however, that if from the case made by your orator and oratrix in the progress of this suit, your honors shall be of the opinion that it is competent for this honorable court to give to said will of 1813 full force and effect, notwithstanding the suppression thereof as charged herein, and as if the same had been probated according to law, and to place your oratrix in the full and complete possession of her rights, as devisee in the said will, in which event your orator and oratrix will insist upon the full extent of the relief which it may be deemed competent for this honorable court to afford to your oratrix, as prayed in said original bill. And your orator and oratrix further show, and charge, that all the matters herein stated to be contained in the said original bill of complaint, as the same is herein and hereby amended, are true, and will be herein and hereby maintained. And your orator and oratrix further show unto your honors, by way of supplement, that the said original bill of complaint was brought to a hearing upon the matters therein contained, and which matters are substantially herein recited and insisted upon, and upon the answer of Charles Patterson, one of the defendants therein in this honorable court, and decree therein rendered, on the twenty-fifth day of April, one thousand eight hundred and forty, in favor of the claims and pretensions of your oratrix, in the words following, to wit:

"This cause having come for final hearing by consent of the complainants and the defendant, Patterson, upon the bill, answer, replication, exhibits, depositions, and documents on file herein, and on the admission of the parties that the estate in controversy in this case exceeds in value the sum of two thousand dollars; and the said complainants and the defendant, Patterson, expressly waiving and dispensing with the necessity of any other parties to *to* the hearing or decision of this cause than themselves, and agreeing that the cause shall be determined alone upon its merits; and the court being now sufficiently advised of and concerning the premises, does finally decree and order, that the defendant, Patterson, do, on or before the first day of the next term of this court, convey and surrender possession to the complainant, Myra Clark Gaines, all those lots or parcels of land lying and being in the city of New Orleans, and particularly described in this answer and exhibits, and to which he claims title, under the said will of (1811) eighteen hundred and eleven; said conveyance shall contain stipulations of warranty against himself only, and those claiming under him. It is further decreed and ordered, that the defendant pay the complainants so much of their costs, expended herein, as has been incurred by reason of his being made a defendant in this cause.

From which decree the defendants prayed an appeal to the Supreme Court of the United States, which is granted. And your orator and oratrix further show unto your honors, that the said order and decree of this court was appealed from by the said Patterson to the Supreme Court of the United States; whereupon, after hearing upon said appeal, the said court, at the January term thereof, in the year 1848,

made the following decree, to wit: We shall direct the decree of the court below to be reversed, and adjudge that a decree shall be made in said court in this suit, declaring that a lawful marriage was contracted in Philadelphia, Pennsylvania, between Daniel Clark and Zuline Carriere; and that Myra Clark, now Myra Gaines, is the lawful and only child of that marriage; that the said Myra is the forced heir of her father, and is entitled to four-fifths of his estate after the excessive donation in the will of 1811 is reduced to the disposable quantum which the father could legally give to others; "that the property described in the answer of the defendant, Mr. Patterson, is a part of the estate of Daniel Clark at the time of his death; that it was illegally sold by those who had no right or authority to make a sale of it; that the titles given by them to the purchaser and by the purchaser to the defendant, Mr. Patterson, including those given by the buyer from the first purchaser to Mr. Patterson, are null and void; and the same is liable, as a part of the estate of Daniel Clark, to the legitime of the forced heir; and that the defendant, Charles Patterson, shall surrender the same, as shall be directed among other things to be done in the premises, as will appear in the decree and mandate of this court to the circuit court in Louisiana." To which said decree your orator and oratrix pray leave to refer, and the same may be made a part of this bill. And your orator and oratrix further show unto your honors, and charge that, by said order and decree, your oratrix is declared and decreed to be the legitimate child and forced heir of the said Daniel Clark, and as such is entitled to receive legally and equitably, as to the said Relf and Chew, and all persons holding under them, all and singular the estate or property, and rights claimed herein and hereby. That although the said Relf and [Chew] were neither of them nominal parties to said decree, yet they and each of them, as well as the said defendant, Mariah Holliday, were, and each of them are, bound and concluded by said decree, so far as the same has adjudicated and established the legitimacy of your oratrix, they and each of them holding the same relation to your oratrix as the said Charles Patterson, and they and each of them having joined in the interrogatories propounded to the witnesses, upon whose testimony said decree was rendered, and propounded cross interrogatories to said witnesses, and each of them, as your orator and oratrix expressly charge. And your orator and oratrix, for greater certainty respecting the matters herein last above stated, pray leave to refer to the record and decree in this honorable court in the case of your orator and oratrix against Charles Patterson, and entitled "an appeal in the Supreme Court aforesaid, Patterson vs. Gaines and Wife," your orator and oratrix, and the decree of said court therein, and that said decrees and records be made a part of this amended bill and supplement. And your orator and oratrix further show unto your honors, that the said Caroline Barnes during her lifetime did sometimes give out and pretend, and that her said heirs do now give out and pretend, that she, the said Caroline Barnes, was the illegitimate daughter of said Daniel Clark, begotten with the said Zuline, the mother of

your oratrix, during the coverture of the said Zuline with said Jerome des Grange, and that the said Caroline Barnes was afterwards made legitimate by the marriage of the said Daniel Clark with said Zuline, at Philadelphia, as in this bill stated; and that by said marriage she, the said Caroline, became, and that her said heirs are now, entitled equally with your oratrix to the estate of the said Daniel Clark, deceased; all which pretences of the said Caroline Barnes and of her heirs your orator and oratrix charge to be without foundation or truth; on the contrary, they expressly charge the fact to be, that the said Caroline Barnes was the daughter of said Jerome de Grange; that your orator and oratrix are free to admit that the said Daniel Clark after his marriage with said Zuline, finding the said Caroline without a paternal protector, did from his ample means provide in a generous and noble manner for the respectable support and education of the said Caroline during his life, and by a legacy to [her] after his death.

And your orator and oratrix further show unto your honors, that the said Richard Relf and Beverly Chew sometimes give out and pretend that they are justly entitled, as partners in trade or otherwise with the said Daniel Clark, during his lifetime, each of them, to one equal one-third part of all and singular the estate, real and personal, which the said Daniel Clark left at his death in his own name or otherwise, (with some small exceptions;) and as a proof of such claims and pretensions, the said Richard Relf and Beverly Chew, and their confederates, pretend to have in their possession, or the possession of one of them, a certain instrument in writing, purporting to have been executed by said Relf, Chew, and Daniel Clark, some time in the year 1813, and within two months of the death of the said Daniel Clark; but your orator and oratrix expressly charge the fact to be, that said pretensions of said Relf and Chew are wholly without foundation in truth, and your orator and oratrix have good reason to believe, and do believe, that said instrument in writing is fictitious, gotten up by some one unknown to your orator and oratrix, for the purpose of defeating the just claims of your oratrix in the premises; and your orator and oratrix further charge, that if said instrument should be shown to this honorable court to be genuine, and to have been executed in all respects as it purports, the same is without legal or equitable force or effect, for reasons apparent upon the face thereof, and was at all times, and is known by said Relf and Chew, and each of them, to have been and to be without such effect, as is clearly shown in all the transactions of said Relf and Chew, and each of them, by the fact that in no instance in their whole course of unlawful proceedings, in regard to the succession of said Daniel Clark, is the said instrument in writing alluded to, nor has any act of theirs in said regard, indicated in its details or results the honest confidence of said Relf and Chew, or either of them, in the legal or equitable effect of said instrument, for any purpose for which it purports to have been designed; and for greater certainty as to the statements and charges of your orator and oratrix, with respect to the inherent defects and vices apparent upon said contract, they pray leave to refer to the same, should

it be produced by said defendants, and attempted to be set up for any purpose in their defence hereto.

And your orator and oratrix further show unto your honors, that before any further proceedings were had in said cause than as herein before stated, the said Maria Holliday and the said John Holliday departed this life. The said Maria, who claimed to be the owner of said property herein described in her own right, departed this life on or about the twenty-first day of July, one thousand eight hundred and forty-two, leaving as her lawful heirs her son, Daniel C. Holliday, and her two daughters, Maria Davis, wife of Dr. William R. Taylor, and Eliza Davis, wife of Minor Kenner, defendants herein named; and the said suit and the proceedings therein having become abated by the death of the said Maria Holliday and the said John R. Holliday, your orator and oratrix, as they are advised, are entitled to have the same revived against the said Daniel C. Holliday, Maria Davis, wife of Dr. William R. Taylor, and Eliza Davis, wife of Minor Kenner, as the heirs of said Maria Holliday and John Holliday, and be restored to the same condition in which they were at the time of their death as aforesaid.

And your orator and oratrix further show unto your honors, that they are informed and believe, that the said Maria Holliday, deceased, wife of John Holliday, also deceased, during her lifetime claimed to be the owner in her own right, and separate and apart from any interest or claim of her said husband, of all and singular the property herein mentioned; and that at her death as aforesaid the said property descended to and vested in the above named Daniel C. Holliday, Maria, wife of said William R. Taylor, and Eliza, wife of said Minor Kenner. That the said Mariah Holliday or John Holliday, or one of them, for several years received and enjoyed the revenues, issues, and profits of said property, herein described, which revenues, issues, and profits, amounted annually to a large sum of money, but the precise amount your orator and oratrix do not know, and are not informed.

That your orator and oratrix are not informed whether the said Maria Holliday or John Holliday left a will and testament.

That they are informed that the said Minor Kenner administered said succession of Maria Holliday, but whether as executor named and appointed in a last will and testament, or as administrator of said succession intestate [they do not know.]

That the said heirs of Mrs. Maria Holliday for some length of time received and enjoyed the revenues, issues, and profits of said property herein described, but for how long a time, or to what amount, your orator and oratrix are at present uninformed.

That the said Minor Kenner now claims to be the owner, and is in possession of the lands herein described, and such of said slaves as are now living, and the increase of the original stock, but in what particular manner the said Minor Kenner became possessed of the right and interest which he now claims in and to said property, or how long since such interest has been acquired by him, your orator and oratrix are uninformed.

That the said Minor Kenner for several years past has been, and now is, in the receipt of all and singular the revenues, issues, and profits of the said property, which amount annually to a very large sum of money.

Therefore your orator and oratrix are, as they are advised, entitled to the benefit of the said suit against the said heirs of Maria Holliday and John Holliday, or either of them, and the said Minor Kenner, as having been, being, or claiming to be, so interested as aforesaid, and to the like relief as they would have been entitled to against the said Maria Holliday and John Holliday, or either of them, if they were still living.

To the end, therefore, that the said suit and proceedings so abated aforesaid may stand revived against the said Daniel C. Holliday, Maria, wife of William R. Taylor, Eliza, wife of Minor Kenner, as the said heirs-at-law as aforesaid, and the said Minor Kenner as now claiming to be the owner of said property, and be in the same condition in which they were at the death of the said Maria Holliday, or the said John Holliday, or that the said heirs and the said Minor Kenner may show good cause to the contrary; and that the said defendants, Daniel C. Holliday, William R. Taylor and Maria, his wife, Minor Kenner and Eliza, his wife, may, if they can, show why your orator and oratrix should not have the relief in their original and amended and supplemental bill prayed; and may, without oath, which is hereby expressly waived, according to the best and utmost of their several and respective knowledge, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

Interrogatory 1. Whether the said Daniel C. Holliday, Maria, wife of William R. Taylor, and Eliza, wife of Minor Kenner, are heirs-at-law of Maria Holliday, deceased; if yea, did they, or either of them, become invested with the right, title, and interest which the said Maria Holliday, at the time of her death, pretended to have had in and to the property described in the original amended bill of complaint in this suit, or any, and what part thereof; and whether the said Maria Holliday, at the time of her death, claimed to be possessed of the entire estate or as owner of the property aforesaid, or any, and what part thereof; and whether the said Maria Holliday left her last will and testament; if yea, who were the heirs, devisees, or legatees named in said will; and whether the same was probated; if yea, when, and where? Set forth said will and proceedings, if any had under the same.

Interrogatory 2. Whether the said Daniel C. Holliday, Maria, wife of William R. Taylor, and Eliza, wife of Minor Kenner, or either and which of them, have received the revenues, issues, and profits of the said property; if yea, from what year and to what year included, or how long, and to what amount, annually, respectively; and whether either, and if so, which of them, now receives or claims to receive any

portion, and if so, what portion, of the revenues, issues, and profits derived from said property?

Interrogatory 3. Whether the said Minor Kenner now claims the entire estate in said property, or in any and what part, and what part thereof, either the land or the slaves, as owner or otherwise; and how does he claim to be interested in said estate, if otherwise; and whether he now receives the revenues, issues, and profits of said property as owner; or if otherwise, how, or in what capacity or relation; and how long has he continued to receive the same, in any and what capacity or relation; and what have said revenues, issues, and profits amounted to annually since he has so received them? And that said Minor Kenner may set forth his title at length to said property in his answer hereto; and that your orator and *and* oratrix may have the benefit of said suit and proceedings therein against the said Daniel C. Holliday, William R. Taylor and Maria, his wife, and Minor Kenner and Eliza, his wife, who claim to be respectively interested as aforesaid, and such relief as if the said John Holliday and Mariah Holliday were still living, they would be entitled to against them, or either of them; and for such further or such other relief in the premises as shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orator and oratrix the people's writ of subpœna, to revive and answer issuing out of and under the seal of this honorable court, to be directed to the said Daniel C. Holliday, William R. Taylor and Maria, his wife, Minor Kenner and Eliza, his wife; thereby commanding them at a certain day and under a certain penalty therein to be inserted, personally to be and appear in this honorable court, then and there to answer the premises, and to show cause, if they can, why the said suit, and the proceedings therein had, should not stand and be in the same plight and condition as the same were at the time of the abatement thereof; and further to stand to and abide such order and decree in the premises as your honors shall seem meet. And your orator and oratrix will ever pray, &c.

P. C. WRIGHT,
Solicitor.

Of counsel.

Note.—The defendants, Holliday, Taylor and wife, Kenner and wife, are required to answer the interrogatories numbered 1 and 2; and the said Minor Kenner is required alone to answer interrogatory No. 3.

P. C. WRIGHT, *Solicitor.*

Endorsement on the foregoing, as follows, viz:
Filed 2d January, 1849.

WM. AUDRY, *D. Clk.*

Replication to answer of John S. Minor.

And afterwards, to wit, on the 5th day of January, 1849, the complainants, E. P. Gaines and wife, by their solicitor, P. C. Wright, esq., filed in this cause the following replication:

U. S. circuit court, 5th circuit, district of Louisiana, in chancery.

EDMUND P. GAINES and Wife
vs.
RICHARD RELF, Beverly Chew, John S. Minor, and others.

The replication of Edmund P. Gaines and Myra Clark, his wife, complainants, to the answer of John S. Minor, defendant.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies in the answer of the said John S. Minor, for replication thereunto say, that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by the repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct; and humbly pray, as in and by their said bill they have already prayed.

P. C. WRIGHT,
Solicitor for compl't.

Endorsed as follows: "Filed January 5th, 1849."
WM. AUDRY, *D. C'k.*

And afterwards, to wit, on the 15th day of January, 1849, further proceedings were had in this cause, and entry thereof made of record in the minutes, as follows:

ED. P. GAINES and Wife
vs.
JOHN S. MINOR & als. } 1729.

It appearing to this court that Philip T. Minor, William N. Minor, Henry Minor, Francis E. Minor, Julia N. Minor, and Laura P. Minor, defendants in this cause, are infants under the age of twenty-one years; on motion of P. C. Wright, of counsel for complainants, it is ordered that Mrs. Myra F. Minor, the mother and tutrix by nature of said infants, be and she is hereby appointed guardian ad litem to defend the above named infant defendants in this suit, and she is required to cause her answer for them to be filed in this cause on or before the rule day in February next. It is further ordered that a copy of this order be served on the said Myra F. Minor on or before the 17th day of January instant.

And afterwards, to wit, on the 5th day of March, A. D. 1849, Myra F. Minor, by her solicitor, Isaac T. Preston, esqr., filed herein, for herself and on behalf of her infant children, the following answer:

To the honorable circuit court of the United States, for the fifth circuit and district of Louisiana.

Myra F. Minor, a citizen of the State of Louisiana, appears in court in pursuance of the subpœna served upon her upon the complaint of Edmund P. Gaines and Myra Gaines, his wife, on behalf of herself, and as mother and tutrix by nature of her minor children, Philip T. Minor, Harry Minor, William N. Minor, Frances E. Minor, Julia N. Minor, and Laura P. Minor, and adopts as their own the demurrers, pleas, and answer heretofore filed in this honorable court for them by their late father and tutor, and her husband, Theophilus P. Minor, on the (3d) third day of November, 1845; and alleges that the facts stated, and allegations made, in said pleadings are true, and are full and complete defences to the original bill of complaint and supplemental bills filed against them by the complainants. But if the demurrers, pleas, and original answer be deemed insufficient, and not otherwise, your respondent answers to the original and supplemental bills of complaint of the complainants, that they with John S. Minor own the whole of the tract of land sued for by virtue of the will of the late Philip Minor, made on the 11th day of July, 1836, and duly probated by the probate court of the parish of Ascension, on the 17th day of September, 1836; that they all hold under the will of Philip Minor, which charged his succession with heavy incumbrances in favor of other heirs and legatees, which will be set forth if it should become necessary to take an account of the same.

For further answer your respondent alleges, that William Kenner and Philip Minor purchased the said tract of land from Beverly Chew and Richard Relf, the executors of Daniel Clark, duly qualified and sworn, as stated in the original answer, and from them as the duly appointed attorneys in fact of Mary Clark, the only legal and instituted heir and legatee of Daniel Clark, as stated in the original answer, by a public act of sale, made before John Lynd, a notary public of New Orleans, dated the 2d day of August, 1816, and paid for the same, then in a wild uncultivated state, the sum of eleven thousand five hundred dollars, which was the full value of said land.

Your respondent alleges that they purchased said land in good faith and without any knowledge or notice of any right or claim to the same by any other person than the vendors, and thereby acquired an equitable title to said land, which cannot be divested in a court of equity.

Your respondent further alleges, that Philip Minor and William Kenner, or his heirs, in good faith and without notice of any other title, increased the plantation by subsequent purchases to a front of forty-three arpens by eighty in depth, the whole of which, by mesne conveyances, finally vested in Philip Minor and G. R. and D. F. Kenner; and before any notice of the claim of the complainant, or any knowledge or notice of any outstanding claim, they divided the plantation in the summer of 1836, and the part now sued for was allotted to Philip Minor, in consideration of which he transferred to G. R. & D. F. Kenner his interest in the remainder of the plantation; by means

whereof he obtained an equitable title to the part now sued for, without any notice of a legal title in the complainant, and which equitable title of Philip Minor having been transmitted to your respondent, cannot be divested in a court of equity.

Your respondent denies that Daniel Clark ever left a will acknowledging complainant as his legitimate child, or that such acknowledgment, if made, could render the complainant legitimate.

And she alleges that Daniel Clark left a last will duly proved, indicating to the world that his mother was his only heir; that he was unmarried, and had no lawful issue.

Further your respondent alleges, that Daniel Clark, during his whole manhood, and to the day of his death, held out in his whole life and conversation to the world, and especially to all truthful, virtuous, and honest people, that he was a batchelor, that he had never been married, and that he had no lawful issue to inherit his estate; and your respondent denies that it was ever known, or believed, or pretended, in this community where he lived and died, that the complainant or any other person was his lawful issue.

And your respondent denies that any person, and especially those under whom she holds her land, had any notice, knowledge, or belief, of any such unfounded pretence which she alleges was got up for the purpose of delusion for the first time twenty-three years after Daniel Clark's death, and was not brought to the notice of those under whom your respondent claims title, until they had held and possessed the tract of land for which they are sued in good faith, and by a just title, for upwards of thirty years; for which reason the claim of the complainant against your respondent is barred by the prescription of ten, twenty, and thirty years, which your respondent expressly pleads against complainant's demand as a complete bar to the same by the laws of Louisiana, and which prescriptions give a good and perfect title to her to the property in controversy, even if the complainant had any pretence to the property, which however she denies.

Your respondent denies that she is bound by the proceedings testimony, or decree, in case of complainants against Charles Patterson, because neither she, nor the father and tutor of her minor children, were parties to the suit when the testimony was taken, nor when the case was tried and decree rendered, and was illegally forced to become a party while that case was pending in the Supreme Court of the United States.

She further alleges, that the decree against Patterson was expressly rendered without prejudice to other parties; that it was rendered by consent, because all proper parties were not before the court, and the cause was not at issue as to many parties interested, and has therefore no effect except upon Patterson himself, and in no manner affects the rights of your respondent or her children.

Your respondent further alleges, that the case of complainant against Patterson was carried on collusively for the purpose of having it prejudiced as to other defendants.

She alleges that the complainant and Charles Patterson had a perfect understanding that she should not, in case of success, take his property, or he lose it, but that he was to retain the property, and the complainant pay all the costs to which he was condemned; and, in fact, Charles Patterson, without any consideration, has retained and possessed the lots sued for to this day, and the complainant has paid the costs decreed against him; for which reasons this respondent is not bound by said decree; and as equity requires parties to come into court with clean hands, this attempt to carry on collusion by deluding the courts, is a bar to any relief in equity to the complainant, if she had ever been entitled to any, which your respondent denies.

Your respondent further alleges, that all suits to annul sales, or other acts for error or fraud, were and are prescribed by the laws of Louisiana by the lapse of ten years, which prescription of ten years she expressly pleads against the claim of complainants as a complete bar to their suit.

Your respondent further alleges, that all informalities in public sales are cured by the lapse of five years, and suits on account of them are prescribed by said term, which prescription of five years she expressly pleads against the claim of complainants.

Your respondent alleges that she, and those under whom she claims title, possessed the land in good faith, and by a just title, and are not bound by the laws of Louisiana to account for the rents and profits of the land, which she pleads against the demand of complainants for an account of the profits of the land.

She further alleges, that the land was purchased in an unimproved state from the representatives of Daniel Clarke, and would not have produced any profits, but for the improvements and cultivation of those under whom she claims, and would not now produce anything annually, but for the labor of the slaves, and those employed by her and her co-proprietors.

She further alleges, the only means she [has] of ascertaining the profits of the land separately from said labor and improvements, is by estimating what it could be rented for annually; and she believes that the whole tract could not be rented for an annual rent of more than a thousand dollars, with the improvements, and for not more than five per cent. on the original cost of eleven thousand five hundred dollars without the improvements.

Your respondent prays that an issue of fact may be made up and tried at law before a jury duly empannelled on the allegation of complainant, that Daniel Clark was married to Zuline née Carriere, and the denial thereof by your respondent.

And on the allegation of complainant that she is the lawful issue of such marriage, and the denial thereof by your respondent; and that further proceedings in this case may take place according to the verdict which shall be rendered on those issues.

And your respondent prays on the demurrers and pleas heretofore filed for her minor children, which she does not waive, but insists upon

the same; and if they should be overruled, upon consideration of the answers heretofore and now filed for and by her and her children, that the complainant's bill of complaint may be dismissed, and that she may have a decree in her favor for her costs.

And that this honorable court would afford her all further and other relief which justice, equity, and the nature of her case may require.

As in duty bound, &c.

ISAAC T. PRESTON,
Solicitor of respondent.

STATE OF LOUISIANA,
Parish of Ascension.

Myra F. Minor, one of the defendants in the suit of Edmund P. Gaines and wife, against her and others, being duly sworn, doth depose and say, that the statements in the foregoing answers are true to the best of her knowledge and belief, and contain also an answer, as far as she is able to make answer thereto, to the interrogatories propounded to her by complainants in their bill of complaint.

MYRA F. MINOR.

Sworn to and subscribed before the undersigned, this 28th day of February, 1849.

R. W. NICHOLLS,
Judge 4th district.

Filed this 5th March, 1849.

ED. RANDOLPH, *Clerk.*

And afterwards, to wit, on the 5th day of March, A. D. 1849, the complainants by their solicitor, P. C. Wright, esq., filed herein the following

Replication.

UNITED STATES CIRCUIT COURT,
5th circuit, district of Louisiana.

EDMUND P. GAINES and Myra Clark, his wife,
vs.
RICHARD RELF, Beverly Chew, Myra F. Minor, and others.
} In chancery.

The replication of Edmund P. Gaines and Myra Clark, his wife, complainants to the answer of Myra F. Minor, and minor children, Philip T. Minor, Harry Minor, William N. Minor, Francis E. Minor, and Julia N. Minor, and Laura P. Minor, by the said Myra F. Minor, their tutor by nature, and guardian ad litem in this suit.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiences in the answers of said defendants, Myra F. Minor and the above named in-

fants by the said Myra F. Minor, their tutor by nature and guardian ad litem in this suit, for replication thereunto say, that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ever ready to aver, maintain, and prove as this honorable court shall direct; and humbly pray as in their said bill they have already prayed.

P. C. WRIGHT,
Solicitor for complainants.

Endorsed: Filed March 5, 1849.

WM. AUDRY, *D. Clerk.*

And afterwards, to wit, on the 16th day of March, A. D. 1849, was filed by the parties herein, by their solicitors, the following

Stipulation.

UNITED STATES CIRCUIT COURT,
5th circuit, district of Louisiana.

In chancery.

EDMUND P. GAINES and Wife
vs.
RICHARD RELF, Beverly Chew, John S. Minor, Myra F. Minor, for herself and her minor children. } No. stipulation.

It is hereby stipulated and agreed, by and between the parties to the above suit, by their respective solicitors, that the testimony of Mesdames Rose Cailavet and Sophie Despeau, two witnesses residing at Biloxi, in the State of Mississippi, which shall be taken by William H. Cleaveland, esq., attorney and counsellor at law, under a commission lately issued to him to take the testimony of said witnesses in a suit entitled Edmund P. Gaines and Wife vs. Richard Relf, Beverly Chew, and François Dusuau de la Croix, pending in the same court where this cause is pending, shall be read on the hearing of this cause with the same effect as if taken in this cause, and shall be considered as testimony regularly taken in this cause; dated New Orleans, March 15, 1849.

P. C. WRIGHT,
Complainants' solicitor.

The above stipulation is agreed to, with the reservation of all such rights of objection as my clients would have a right to make in case

said testimony so to be taken had been taken in this case, there being no objection to be made as to the form of taking the testimony. March 15th, 1849.

ISAAC T. PRESTON,
Solicitor for defendants.

Endorsed: "Filed in open court, this 16th day of March, 1849."
ED. RANDOLPH, *Clerk.*

And afterwards, to wit, on the 22d day of March, 1849, the following entry was made of record in the minutes:

ED. P. GAINES and Wife
vs.
RELF, Chew, John S. Minor, and others.

On motion of P. C. Wright, solicitor for complainants, it is ordered, that the bill of complaint in this cause be, and the same is hereby, dismissed as to the defendants, Duncan K. Kenner, Minor Kenner, and G. Currie Duncan and wife, who are the heirs of William Kenner, deceased.

And afterwards, to wit, on the 10th day of April, 1849, an entry of proceedings was made in the minutes, as follows:

122, Ed. P. Gaines and Wife vs. Relf, Chew, et als.
1728, Same vs. Ant. Cavellier et als.
1731, Same " De la Croix et als.
1785, Same " Norbert Louque et als.
1729, Same " John S. Minor et als.
1784, Same " Robert R. Barrow et als.
1408, Same " Madison Lyon et als.

Interrogatories and cross interrogatories having been filed in the above entitled causes, to be administered to Philander Chase, of Peoria county, of the State of Illinois, a witness to be sworn and examined on the part of the complainants, it is ordered, on motion of P. C. Wright, solicitor for complainants, that a commission be issued to Onslow Peters, esqr., attorney and counsellor-at-law of Peoria, Peoria county, in the said State of Illinois, to take the testimony of said witness, according to the rules and practice of this court, to be used on the hearing of the said causes.

And afterwards, to wit, on the 27th April, A. D. 1849, an entry of proceedings was made on the minutes, as follows:

122, Ed. P. Gaines and Wife vs. Relf, Chew, Hopkins, et als.
1731, Same " Frs. Dusuau de la Croix.
1728, Same " Antoine Cavelier et als.
1729, [Same] " John S. Minor et als.
1785, [Same] " Norbert Louque et als.
1784, [Same] " R. R. Barrow et als.
1408, [Same] " Giroseau Richards et als.

4512.

On motion of P. C. Wright, of counsel for complainants, it is ordered, that Mr. William H. Hunt, a commissioner of the court, residing in the city of New Orleans, be, and he is hereby, appointed examiner to take the testimony of witnesses to be produced and examined on the part of complainants, and to receive and file any and all exhibits or documentary evidence offered by complainants; and that he return the said testimony of witnesses, and said exhibits or documentary evidence, into court with all convenient despatch.

And afterwards, to wit, on the 24th May, 1849, four exhibits marked respectively A, B, C, D, were filed in this cause on behalf of Mr. Minor, as follows:

Exhibit A.

Be it known, that on this thirteenth day of February, in the year of our Lord one thousand eight hundred and thirty-two, and of the independence of the United States of America the fifty-sixth:

Before Greenbury Ridgely Stringer, notary public, in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared Mrs. Frances Ann Kenner, formerly wife of the late John Dick, deceased, now wife of George Currie Duncan, of this city, and herein by her said husband, G. C. Duncan, duly authorized and assisted and the said appearer declared that she does by these presents, grant, bargain, sell, and deliver, with full guaranty against all mortgages, debts, liens, suits, evictions, and encumbrances whatever, unto Minor Kenner, of the parish of Ascension, in this State, and to his heirs and assigns, (the purchaser being present and accepting) all and singular the one undivided eighth part of a certain plantation, situated in the parish of Ascension, in this State, on the left bank of the river Mississippi, bounded above by the plantation of Henderson and Doyle, and below by that of Jean Louis Picon, the said plantation being generally known and designated as "Linwood," as situated about seven miles above the town of Donaldsonville, and measures forty-three acres, more or less, in front, by a depth of eighty acres; together with all the buildings and improvements on the said plantation, the horses, mules, drays, carts, live stock, sugar mill, machinery, agricultural implements, and in general all the appurtenances belonging to the said plantation or thereunto in any wise appertaining; also the one undivided eighth part of those one hundred and eighty-four slaves employed on said plantation, of the names following, to wit: Branch, Bob, Moses, Claiborne, Cuffee, Dan, Dennis, Stephen, Jacob, Alex, Tom, Jacques, Tom, Simon, Coleman, Nat, Barney, Tom Brown, Phil, Sampson, George, Andrew, Haming, Peter, Davy, Stephen, Mortimer, Tom, Taylor, Harry, Clark, Rollo, Phil, Caleb, Dan, Will, Baptiste, Jack, Robin, Handley, Mano, John, Cooper, Harry, Morris, Bishop, William, Kit, Massonda, Joe, Hacke, Charles, John, Military, Ned, Tim, Dumbo, Davy, Lige, Archy, Sandy, Moses, Archy, Dick, Tim, Richard, Cato, John Brown, Todd, Tonny, Maydonba, Old Ned, Matanda, Davy, Nano, Billy, Percy,

Eliza, Hannah, Cinthy, Betsy, Jinny, Melina, Cealy, Silla, Trury, Sarah, Judy, Betsy, Molly, Nancy, Patty, Kitty, Mathilda, Patty, Jinny, Dice, Fanny, Fanny, Peggy, Lucy, Cassey, Mary, Viny, Clara, Patsey, Maug, Molly, Betsy, Amelia, Charlotte, Chloe, Suckey, Lucy and Nelly, Hannah, Ellen, Suckey and Jenny, Caroline, Sehems, Celeste, Lango, Anna and Lydia, Solomon, Milly, Eliza, Spencer, Cassey, Johnson, Bazil, Milly, Elick, Alex, Catrice, Rose, Nancy, Ned, Ben, Pelasia, Harriet, Sally, Billy, Billy, Violet, Polly, Litty, John, Sally, Hetty, Rachel, Brown, Tom, Julia, Queen, Laurent, Sampson, Gabriel, Peter, Joe, Harry, Phil, Prudence, Amandi, Louis, William, Elsey, Rachel, Ben, Saylor, Phil, Beckey, Dan, Anthony, Sarah, Joe, Fanny, Peggy, Bartlett, Lucy, Jessy, Tim, Stephen, Anthony, Charles. The property herein conveyed is the same which was acquired by said vendor by right of inheritance from her parents, William and Mary Kenner; and the said purchaser declared that he was fully satisfied with the title of said vendor to said property, and required no further information respecting the same. To have and to hold the said undivided eighth part of said plantation, appurtenances and slaves, unto the said purchaser, and to his heirs and assigns forever; and the said vendor shall and will warrant and forever defend the property herein conveyed, against all legal claims and demands whatever. The said vendor hereby, moreover, transfers to said purchaser all the rights of action and warranty to which she herself is entitled, against any of the former proprietors of the property herein conveyed, to be by him exercised and enjoyed as fully, amply, and effectually as they might have been by the vendor herself. This sale is made for and [in] consideration of the sum of twenty-five thousand dollars, payable in the manner following, to wit, twelve thousand five hundred dollars in cash, which said vendor hereby acknowledges to have received, and for which she hereby granted acquittance; and the remaining sum of twelve thousand five hundred dollars, by said vendor received in other property this day transferred to her by said purchaser, as per act before me, notary, this day, to which this act refers.

The parties to this act further declare that this sale was made upon the terms and conditions herein expressed on the sixth day of May last, (1831,) that no other act of the same has been passed prior to this act, and that it is their wish and intention that their several and mutual rights and obligations, as vendor and vendee, shall be considered as having commenced and as taking effect from the sixth May.

And no certificate having been produced as required by law to show what mortgages, if any exist, recorded on the property therein conveyed, the said purchaser declared that he was fully acquainted with the situation of said property, and was satisfied to receive this sale without (such certificate,) the production of such certificate, and to exonerate me, the notary, from all responsibility which I may incur, by law, in consequence of the non-production of such certificate. Thus done and passed in New Orleans aforesaid, in presence of J. P. Benjamin, George C. Kuhn, witnesses, and me, notary. The original is signed, Frances

Anne Duncan, G. Currie Duncan, Minor Kenner, J. P. Benjamin, and Geo. C. Kuhn, J. R. Stringer, notary public.

I hereby certify the foregoing to be a true copy from the original. In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this 15th day of February, 1832.

(Signed) J. R. STRINGER, *Not. pub.* [L. S.]

Recorded the above by request of Mr. Minor Kenner, this 20th February, 1832.

Signed, EDWARD DUFFEL,
Parish judge.

I, the undersigned, recorder of the parish of Ascension, certify the foregoing to be a true copy from the records of my office, book of notarial acts, No. 10, p. 219, and seq.

In testimony whereof I hereunto set my hand and seal of office, at the parish of Ascension, this 16th day of December, 1848.

[L. S.] ALBERT DUFFEL,
Parish recorder.

Endorsed as follows:

"Offered in evidence on behalf of Mr. Minor."

Filed by consent, 24th May, 1849.

ED. RANDOLPH, *Clerk*,
J. W. GURLY, *D'y clerk.*

A.

Exhibit B.

Be it known, that, on this sixth day of March, in the year of our Lord one thousand eight hundred and thirty-two, and of the independence of the United States of America the fifty-fifth, before me, Greenberry Ridgely Stringer, notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared Minor Kenner, of the parish of Ascension, who declared that he does by these presents grant, bargain, sell, and deliver, with full guaranty against all mortgages, debts, liens, suits, evictions, and incumbrances whatever, unto Philip Minor, of the parish of Ascension, in this State, and to his heirs and assigns, (the said purchaser being present and accepting,) all and singular the one undivided moiety of a certain plantation, situated in the said parish of Ascension, in this State, on the left bank of the *river* Mississippi river, bounded above by the plantation of Henderson and Doyle, and below by that of Jean and Louis Picon, the said plantation being generally known and designated as "Linwood," is situated about seven miles above Donaldsonville, and measures forty-three acres, more or less, in front, by a depth of eighty acres; together with all the buildings and improvements on the said plantation, the horses, mules, drays, carts, live stock, sugar mill machinery, agricultural implements, in general, all the appurtenances belonging to the said plantation or thereunto in

anywise appertaining. Also, the undivided moiety of those one hundred and eighty-four slaves employed on said plantation, of the names following, to wit:

Branch, Bob, Moses, Claiborn, Cuffee, Dan, Dennis, Stephen, Jacob, Alex, Tom, Jacques, Tom, Curron, Colman, Nat, Barny, Tom Brown, Phill, Sampson, George, Andrew, Flemming, Peter, Davy, Stephen Mortimer, Tom Saylor, Harry Clark, Rolla, Phill, Caleb, Dan, Will Baptiste, Jack, Robin, Handly, Mano, John, Cooper, Harry Morris, Bishop William, Kit Massoura, Joe Flack, Charles, John, Military, Ned, Jim, Sambo, Davy, Lige, Archy, Sandy, Moses, Archy, Dick, Jim, Richard, Cato, John, Brown, Todd, Tom, Mayamba, Old Ned, Malaula, Davy, Mano, Billy, Perry, Eliza, Hannah, Christy, Betsy, Jessy, Melina, Cealy, Scilly, Jeny, Sarah, Judy, Betsy, Milly, Nancy, Patty, Kitty, Matilda, Patty, Jenny, Dice, Fanny, Peggy, Lucy, Cassy, Mary, Viney, Cloe, Patty, Nancy, Molly, Betsy, Amelia, Charlotte, Clara, Sukey, Lucy, Nelly, Hannah, Ellen, Suckey, Jeny, Caroline, Selima, Celest, Longo, Anna, Lydia, Solomon, Milly, Eliza Spencer, Cassy, Baziler, Johnson, Milly, Eli, Alex, Catrice, Rose, Nancy, Ned, Rea, Pelasia, Harriet, Sally, Billy, Violet, Letty, John, Sally, Kitty, Rachel, Brown, Tom, Julia, Billy, Queen, Laurent, Sampson, Gabriel, Peter, Joe, Harry, Phil, Prudence, Amanda, Louis, William Elsy, Richard, Ben, Sailor, Phill, Becky, Dan, Anthony, Sara, Joe, Fanny, Peggy, Bartlett, Lucy, Jesse, Jim, Stephen, Anthony, Charles. The property herein conveyed is the same of which an undivided eighth part was acquired by said vendor by right of inheritance from his parents, William and Mary Kenner, he being one of the beneficiary heirs of said parents; another undivided eighth part was acquired by him by purchase from Mrs. Frances Anne Duncan, by act of sale passed before me, notary, on the thirteenth day of February last, (1832;) and the said purchaser declared that he was satisfied with the title of said vendor to the remaining fourth part of said plantation and slaves, and required no further information respecting the same. And the said vendor shall and will warrant and forever defend the property herein conveyed against all legal claims and demands whatever. The said vendor, moreover, transfers to said purchaser all the rights of actions and warranty to which he himself is entitled, against any of the former proprietors of the property herein conveyed, to be by him exercised and enjoyed as fully, amply, and effectually as they might have been by said vendor himself. This sale is made for and in consideration of the sum of one hundred thousand dollars, ($100,000,) payable in the manner following, to wit, seventy thousand dollars cash, by said vendor received, for which he hereby grants acquittance, and the remainder in five several promissory notes, each of six thousand dollars, with interest thereon at the rate of six per cent. per annum, all dated this day; drawn by Philip Minor to the order of said Kenner, and payable, respectively, in one, two, three, four, and five years after date; which notes have been delivered to said Kenner, who hereby acknow-

ledges receipt thereof, the same having been herewith identified by me, notary. And in order to secure the full and punctual payment at maturity of the above described promissory notes, the property herein conveyed is mortgaged and specially hypothecated in favor of said vendor; and no certificate having been produced, as required by law, to show mortgages, if any, exist recorded on the property herein conveyed, the said purchaser declared that he was fully acquainted with the situation of said property, and was satisfied to receive this sale without the production of said certificate, and to exonerate me, the notary, from all responsibility which I may incur by law in consequence of the non production of such certificate.

Thus done and passed in New Orleans aforesaid, in presence of J. P. Benjamin and George C. Kuhn, witnesses, and me, notary. The original is signed Minor Kenner, Philip Minor, J. P. Benjamin, George C. Kuhn, G. R. Stringer, notary public.

I hereby certify the foregoing to be a true copy of the original on record in my office.

In faith whereof I grant these presents, under my signature and seal of office, this eighth day of March, eighteen hundred and thirty-two.

(Signed) G. R. STRINGER, [L. S.]
Notary public.

Recorded by request of Mr. Philip Minor, at the parish of Ascension, this 3d May, eighteen hundred and thirty-two.

(Signed) EDWARD DUFFEL,
Parish judge.

I, the undersigned, recorder of the parish of Ascension, certify the aforegoing to be a true copy from the records of my office, book of notarial acts, No. 11, p. 26, and seq.

In faith whereof I hereunto set my hand and seal of office, at the parish of Ascension, this 16th day of December, 1848.

[SEAL.] ALBERT DUFFEL,
Parish recorder.

Endorsed as follows: "Offered in evidence in behalf of Mr. Minor."

Filed by consent, 24th May, 1849."

ED. RANDOLPH,
Clerk.
Per J. W. GURLEY,
Deputy clerk.

B.

Exhibit C.

(Philip Minor's will.)

UNITED STATES OF AMERICA,
State of Louisiana.

Be it remembered, that on this eleventh day of July, in the year of

our Lord one thousand eight hundred and thirty-six, and in the sixty-first year of the independence of the United States of America, at the request of Philip Minor, a resident of the parish of Ascension, State first aforesaid, I, John H. Ilsley, a notary public, dwelling and duly commissioned and sworn for the parish of Ascension, went to the plantation of the said Philip Minor, situate in said parish, and then and there being, I found the said Philip Minor in a weak state of health, but of a sound mind; and the said Philip Minor did then declare to me, in the presence of Thomas E. H. Cottman, J. Y. Gibson, and John Penny, all freeholders residing in said parish of Ascension, and of the legal age, and in every respect duly qualified in the premises, that he was desirous of making his last will and testament; which in my presence, and in the presence of the above mentioned witnesses, the said Philip Minor dictated to me word for word as follows, to wit:

I, Philip Minor, being in a feeble state of body, but of a sound mind, do declare this to be my last will and testament, and do hereby will and bequeath my property, real and personal, in the following manner, to wit: First. I will and bequeath and give unto my negro woman named Lucy, and her five children, William, Adde, Lang, Patrick and Furn, their freedom. Second. I will and bequeath unto Lucy, and each of her children as aforesaid, the sum of two thousand dollars, making the sum of twelve thousand dollars. Thirdly. I hereby appoint and nominate Theophilus P. Minor my testamentary executor. Fourthly. I will and bequeath the sum of five thousand dollars to Minor Kenner, also the sum of five thousand dollars to George R. Kenner; also the sum of five thousand dollars to Duncan F. Kenner, and also the sum of five thousand dollars to Philip Minor Kenner, the son of William B. Kenner. Fifthly. I will and bequeath unto my brother, Theophilus Minor, the sum of five thousand dollars. Also to my brother Joseph Minor the sum of five thousand dollars. Sixth. I wish my executor, and hereby bind him, to pay all the above mentioned legacies in equal payments of one, two, three, four, and five years, making five equal payments; and I also bind him to pay unto each legacy an interest of six per cent. per annum until paid. Seventh. I hereby will and bequeath unto the legal heirs of my executor and nephew, Theophilus P. Minor, all the balance, after paying the above mentioned legacies of my estate, real and personal, wherever it may be found. And the said Philip Minor having declared to me that he had no further bequests to make, I, the said notary, did read aloud to the testator, in presence of the witnesses aforesaid, the above testament as delivered and written, by me as the same was delivered by the testator. In testimony whereof, the said Philip Minor has hereunto subscribed his hand by making a cross as the recognition of his will, as he declares he is unable through weakness to subscribe his name, in the presence of Thomas E. H. Cottman, J. Y. Gibson, and John Penny, the witnesses aforesaid, who have all hereunto subscribed their names with me, the notary public; all the above formalities having been performed at once without interruption or turning to other acts. Done and passed on the plantation of Philip

Minor aforesaid, on the day, month, and year first above written. The original act is signed

his
PHILIP ⋈ MINOR,
mark.
THOMAS COTTMAN,
J. Y. GIBSON,
JOHN PENNY,
JOHN H. ILSLEY,
Notary public.

A true copy from the original on record under my hand and seal, at Ascension, this 13th day of August, 1836.

(Signed) JOHN H. ILSLEY, [L. S.]
Notary public.

Recorded by virtue of a decree of the court of probates of the parish of Ascension, State of Louisiana, dated this day. Parish of Ascension, 17th September, 1836.

EDWARD DUFFEL, *Judge.*

On the margin is written "and unto my brother Noah Minor the sum of five thousand dollars." The above words having been omitted in the copy of the will dated 13th August, 1836, by error, is inserted in this margin, nunc pro tunc, to correct the error, by order of the court of probates, dated 26th March, 1841. Signed

EDWARD DUFFEL, *Judge.*

True copy from the book of records of the probate court of Ascension.

Witness my hand and seal, at the parish of Ascension, this first day of February, 1845.

EDWARD DUFFEL, *Judge.*

On reading the petition, and the last will and testament of the late Philip Minor, deceased, executed by public act before John H. Ilsley, esq., notary public, on the eleventh day of July, anno domini eighteen hundred and thirty-six, filed in this case, the decease of the testator having been sufficiently proved, it is ordered, adjudged, and decreed, that said testament be executed and recorded. It is further ordered and decreed, that letters of administration be delivered to Theophilus P. Minor, as testamentary executor of said testament, on his taking the oath required by law, 17th September, 1836.

(Signed) EDWARD DUFFEL, *Judge.*

On motion of Ilsley and Nichols, of counsel for Theophilus P. Minor, testamentary executor of the late Philip Minor, and on showing to the satisfaction of the court that the words "and unto my brother, Noah Minor, the sum of five thousand dollars" were erroneously omitted in the copy or said will annexed to this petition, it is therefore or-

dered that the correct and collated copy annexed to this motion be filed, and that the same be considered as if filed on the 17th September, 1836, nunc pro tunc, and that the words so omitted be inserted as a part of the registry of said will on the margin of the record of said will, immediately following the bequest made in disposition fifth of said will in favor of Joseph Minor, and that the said error be considered as cured. 26th March, 1841.

EDWARD DUFFEL, *Judge*.

A true copy from the original on file in the office of the court of probates, parish of Ascension.

Witness my hand and seal, said parish of Ascension, first [SEAL.] day of February, 1845.

EDWARD DUFFEL, *Judge*.

Endorsed: "Filed by consent, 24th May, 1849, and offered in evidence on behalf of Mr. Minor."

ED. RANDOLPH, *Clerk*,
J. W. GURLEY, *D. Clerk*.

(C.)

Exhibit D.

We, the undersigned, agree to divide a certain tract of land called Linwood plantation, bounded above by Henderson and Doyall, and below by John Louis Picon.

I, Philip Minor, take for my portion from the line of Henderson and Doyal to the first stake planted by us in the fourth ditch below the canal, with the following slaves, viz: Barney, Big Bob, Hanly, John Brown, Dennis, Flemming, Dick, Charles, Tom, Zell, Stephen, Harry, Nat, Dumbo, Joe, Right, Masoonda, Todd, Phil, Hack, Ily, Letty, John, Jerry, Caroline, Lango, Anne, Peggy, Delphia, unknown Joe, Fanny, Cassy, Hetty, Polly, Mary, Hanna, Malinda, Scilla, Jemmy, Lucy, Nancy, Sucky, Patty, Charlotte, Stephen, Peter, Mort, Basil, Batiste, Dan, Cook, G. Jim, Charles, Mason, Moses, Gabriel, Moses, Cimon, William, Richard, Tom Minor, Meemba, Caleb, Nano, Barlett, William, Ailsey, Wilson, Charles, Peter, Harry Forecastle, Prudence, Ammeda, Harriet, Sol, Lydia, Rachel Brown, Hannah, Lucy, Ellen, Amelia, Cynthia, Dicey, Chloe, Queen, Cassy, Matilda.

I, Duncan F. Kenner, take from P. Minor's lower line to stakes planted by us as marking the line between George R. Kenner and myself, with the following slaves, viz: Branch, Jacob Lidge, Billy P., Rolla, Big Davy, Bishop, Archy, Samson, Spencer, Tom, Homespun, Alex, Cuffee, Ned, Sandy, Jacques, Old Molly, Phill, Sailor, Milly, Ely, Alex, Chiron, Celeste, Branch, Lorunt, Sam, Kizzy, Unknown, Becky, Sally, Tom, Cushmore, Eliza, Sara, Rose, Molly, Patty, Bet, Violet, Nancy H., Old Peggy, Milly.

I, George R. Kenner, take for my portion from D. F. Kenner's line to Picon's line, more or less, with the following slaves: Jake, Phill, Stephen, Robin, Clark, Little Davy, Beco, Anthony, J. Military, Jim,

Harry, Tom, Antoine, Kit Johnson, Dan Crook, Billy Louis, Rachel, Ned, Ben, Palasie, Sancho, Unity, Dan, Sally, Joe, Lucy, Esther, Catrice, Ben, Kitty, Nancy, Viny, Judy, Fanny, Clara, Fanny, Betsey, Bias, Betsy, Old Suckey.

(Signed) PHILIP MINOR,
DUNCAN F. KENNER,
GEO. R. KENNER.

Witnesses: (Signed.)
ROBERT MORRIS.
THOMAS E. H. COTTMAN.

Recorded from the original deed of partition which is hereunto annexed for reference.

Parish of Ascension, this 28th day of December, 1836.

EDWARD DUFFEL,
Parish Judge.

I do hereby certify the foregoing to be a true copy from the record books of natural acts in my office, witness my hand and seal, parish of Ascension, State of Louisiana, this first day of February, 1845.

EDWARD DUFFEL, [SEAL.]
Parish Judge.

Endorsed: "Offered in evidence on behalf of Mr. Minor."
Filed 24th May, 1849, by consent.

ED. RANDOLPH, *Clerk*,
Per J. W. GURLEY, *Dep. Clerk.*

D.

And afterwards, to wit, on the 4th day of June, A. D. 1849, the following proceeding was made of record on the minutes, viz:

New Orleans, 4th June, A. D. 1849.

Court met pursuant to adjournment
Present, honorable Theodore H. McCaleb, district judge.
Absent, honorable John McKinley, presiding judge.

E. P. GAINES AND WIFE vs. J. S. MINOR et al. } 1729.

E. P. GAINES AND WIFE vs. A. PIERNAS et al. } 122.

On motion of Isaac T. Preston, esq., solicitor for the defendants, herein it is ordered, that the time for taking testimony in these cases be extended and enlarged for the term of three months. This order is applied for and granted with reservation of any rights complainants may have, on motion to set the same aside.

And afterwards, to wit, on the 8th day of June, A. D. 1849, the following order was made and entered of record on the minutes:

New Orleans, Friday, 8th June, A. D. 1849.

Court met pursuant to adjournment.
Present, honorable Theodore H. McCaleb, district judge.
Absent, John McKinley, presiding judge.

122, Edmund P. Gaines and Myra Clark, his wife, vs. R. Relf, B. Chew et al.
1728, Same vs. Antoine Cavelier et als.
1408, Same vs. Charles Matthews et als.
1729, Same vs. Holliday Kenner et als.
1731, Same vs. François Dusuau de la Croix et als.
1784, Same vs. Robert R. Barrow et al.
1785, Same vs. Norbert Louque et al.
1408, Same vs. Madison Lyons et al.
1729, Same vs. John S. Minor et al.
1820, Same vs. John F. Miller et al.
1765, Same vs. Richard Relf and Beverly Chew.

Upon suggesting to the court the death of Edmund Pendleton Gaines, one of the complainants in the foregoing entitled suits, who was made a party complainant thereto in the right of his wife, the said Myra Clark, and no abatement of said suits having resulted from his death:

On motion of P. C. Wright, of counsel for complainants, it is ordered, that the said suits be hereafter proceeded in, in the name of Myra Clark Gaines, as complainant.

And afterwards, to wit, on the 14th June, A. D. 1849, the following order was entered of record on the minutes, viz:

New Orleans, 14th June, A. D. 1849.

Court met pursuant to adjournment.
Present, honorable Theodore H. McCaleb, district judge.
Absent, honorable John McKinley, presiding judge.

122, Myra Clark Gaines vs. Richard Relf, Beverly Chew, et al.
1728, Same complainant vs. Antoine Cavelier et al.
1729, Same complainant vs. Holliday Minor Kenner et al.
1408, Same complainant vs. Charles Matthews et als.
1731, Same complainant vs. François Dusuau de la Croix et al.
1784, Same complainant vs. Robert R. Barrow et al.
1785, Same complainant vs. Norbert Louque et al.
1408, Same complainant vs. Madison Lyon et al.
1729, Same complainant vs. John S. Minor et al.
1820, Same complainant vs. John F. Miller et al.

On motion of P. C. Wright, of counsel for complainant, and G. B. Duncan, I. T. Preston, J. Lavergne, of counsel for certain of the defendants, being present and consenting thereto, it is ordered that publi-

cation of the testimony, taken and to be taken in the State of Louisiana, since issue joined in each of the foregoing causes, shall be passed on the first Monday in July next, and that the period for taking testimony in the said causes, by either of the parties in the State of Louisiana, shall terminate on that day, reserving to either party all such exceptions to the admissibility of said testimony as go to the substance thereof, and not to the form or manner of taking the same. It is further ordered, that the several commissions which have been already issued to take the testimony of Bishop Chase, D. W. Coxe, Samuel B. Davis, and P. Hickey, witnesses in the above causes, shall be opened by the clerk of the court, upon application of either of the parties, in case they shall not be returned before the first Monday in July next; and, in case said commissions shall be returned before said first Monday in July, then publication thereof may be made previously, by application to the clerk to open the same; also publication may be in like manner made of the testimony to be taken by any commission hereafter to be issued in the above causes, on application to the clerk by either party. It is further ordered, that either party may take out a commission to take testimony at any time before the first Monday in July next; and said commission or commissions, when returned into the clerk's office, may be opened by application to the clerk as aforesaid. The publication of any testimony made after and under this agreement is in no manner to preclude either party from [taking] testimony under commission out of the State of Louisiana, under the orders and rules of the court, if such party has a right otherwise to do so. This order is not to be construed as precluding any party from applying to the court under special circumstances, and for special cause shown for additional time, provided that the hearing of this cause shall not be delayed beyond the time fixed in this order, unless by reason of unforeseen or unavoidable circumstances. It is further ordered, that the above causes be, and they and each of them are hereby, set for hearing on the second Monday of November next.

And afterwards, to wit, on the 29th day of January, 1850, the following entry was made on the minutes, viz:

122, Myra Clark Gaines vs. Relf, Chew, Hopkins, et als.
1731, " vs. F'co Dusuau de la Croix et al.
1729, " vs. John S. Minor et als.

By consent of the solicitors representing the parties herein, these causes are considered as being before the court for trial; and it is ordered that an *an* entry be made on the minutes to that effect.

U. S. circuit court, 5th circuit, district of Louisiana.

In chancery. No. 122.

EDMUND P. GAINES and MYRA CLARK, his wife,
vs.
RICHARD RELF, Beverly Chew, and others.

It is hereby agreed and stipulated between the above named com-

plainants and the defendants, Chew and Relf, that the answers of said defendants heretofore filed to the original, amended, and supplemental bill of complaint in the above entitled suit, and numbered 122 on the docket of causes in this court, shall be deemed and taken, and received as their several answers to the amended and supplemental bills of complaint heretofore filed by complainants, and that the same shall be taken as made under oath in the several suits, numbered 1408, 1785, 1784, and 1820; saving, however, that such parts of said answers as were necessary when they were filed to meet allegations in the original or amended bills, but are not now necessary to meet or respond to any allegations contained in the present amended and supplemental bills, shall be rejected as surplussage.

And the same stipulation is extended to the several demurrers and pleas filed in said case, they to be regarded in the same manner, and with the same force and effect, as if they had been regularly filed in conformity to the rules and practice of this court in chancery, saving to the parties the same rights which they would have in case said pleadings had been regularly filed in each of the above causes as numbered.

To prevent any misunderstanding, it is stipulated that in case it should be hereafter seen that the numbers above mentioned are not correct, or if any case has been omitted and not numbered as above, the true intent of the parties is that this stipulation shall cover such case.

This stipulation is not to prevent the complainants amending their bill, nor the defendants their answers, or from filing supplemental bills or answers if they have the right to do so by the rules and practice of this court in chancery, or shall be so allowed or ordered by the court upon sufficient cause shown.

It is further stipulated that the pleadings hereinbefore mentioned shall be deemed and taken to have been filed on the rule day in May instant, at which time complainants' replication shall be deemed to have been filed, and said causes at issue on that day.

It is further stipulated that the complainants shall have leave to dismiss their bill of complaint as to the defendants, Relf and Chew, in either or all the causes before numbered, without prejudice to other parties or suits, and on such terms of paying costs as the rules and practice of the court impose in case of dismissal of bills on motion of complainants.

It is further stipulated and agreed, that the said pleadings of said defendants shall be deemed to have been filed in causes, number 1729 and 1731, on the first Monday in March last, (1849,) with the same reservation as aforesaid of the right of complainants, with regard to said pleadings, that being the day on which said causes were at issue as to the other defendants therein; but nothing in this stipulation shall prevent either party from applying to the court for an order to extend time for taking the testimony, upon showing to the court sufficient reason therefor, which application the opposite party may oppose.

It is further stipulated that in suit No. 1765 the complainant shall have the time allowed by the rules and practice of this court to file re-

plication, or to take other proceedings; said pleadings on the part of defendants being considered as filed on the first Monday in May instant.

It is further stipulated that all the testimony, documentary evidence, and exhibits, which have been, or may hereafter be, taken and filed in said cause No. 122, may be produced and read at the hearing of the before numbered causes, or either of them; subject, however, to all such exceptions and objections as might be had or taken to the same, if regularly taken, produced, and filed in said suits, or either of them; saving to either party, or either of the defendants in said causes, such exceptions to said testimony and other evidence as may be peculiar to himself.

Dated May 25, 1849.

P. C. WRIGHT,
For complainants.
G. B. DUNCAN,
Sol'r for Chew, Relf, and others, as per record.

Endorsed: Filed 27th June, 1849.

J. W. GURLEY,
Deputy clerk.

And afterwards, to wit, on the 21st day of February, 1850, a final decree was rendered, and an entry thereof made in the minutes, as follows:

122, Myra Clark Gaines vs. Relf, Chew, Hopkins, et als.
1731, Same vs. F'co Dusuan de la Croix et als.
1729, Same vs. John S. Minor et als.

These causes having been argued and submitted at a former day of this term, and the court having maturely considered the same, this day delivered its opinion, and in conformity thereto ordered, adjudged, and decreed, that complainants' bill be dismissed with costs.

And afterwards, to wit, on the said 21st day of February, 1850, the following order of appeal was granted and entered of record on the minutes:

122, Myra Clark Gaines vs. Relf, Chew, Hopkins, et als.
1731, Same vs. F. Dusuan de la Croix et als.
1729, Same vs. John S. Minor et als.

The complainant comes into court, and prayed an appeal to the next term of the Supreme Court of the United States, to be holden at Washington city, from the decree rendered in these causes in this court; which application is granted by the court, upon the plaintiff's giving bond in each cause in the sum of five hundred dollars, with Francis L. Lyon and George S. Gaines, as sureties; which bonds being tendered in court, were approved and ordered to be filed.

And afterwards, the decree in this case was recorded in the judgment docket and signed as follows: